

914  
No. 2455

IN THE  
**United States Circuit Court of Appeals**  
NINTH CIRCUIT

N. COY,

Complainant,

vs.

THE TITLE GUARANTEE & TRUST COMPANY,  
a corporation, J. THORBURN ROSS, GEORGE H.  
HILL, T. T. BURKHART, JNO. E. AITCHISON  
and F. M. WARREN,

Defendants,

MULTNOMAH COUNTY, OREGON, et al

Intervenors, Respondents,

R. S. HOWARD, Jr., Receiver,

Appellant.

**Appeal from the District Court of the United  
States for the District of Oregon.**

**TRANSCRIPT OF RECORD.**

**Filed**

**JUL 31 1914**

**F. D. Monckton,**

**Clerk.**



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HILL, T. T. BURKHART, JNO. E. AITCHISON  
and F. M. WARREN,

Defendants,

MULTNOMAH COUNTY, OREGON, et al

Intervenors, Respondents,

R. S. HOWARD, Jr., Receiver,

Appellant.

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**Names and Addresses of Attorneys  
upon this Appeal:**

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**For Appellant:**

W. C. Bristol,

Wilcox Bldg., Portland, Oregon

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**For Respondents:**

Emmons & Webster,

Chamber Commerce, Portland, Oregon

W. H. Evans, District Attorney,

Portland, Oregon

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*In the District Court of the United States for the  
District of Oregon.*

Be it Remembered, that on the 6 day of November,  
1907, there was duly filed in the District Court of  
the United States for the District of Oregon, a  
Bill of Complaint in words and figures as fol-  
lows, to wit:

**[Bill of Complaint.]**

*In the Circuit Court of the United States for the  
District of Oregon.*

N. COY,

Complainant,

vs.

THE TITLE GUARANTEE & TRUST COM-  
PANY, a Corporation, J. THORBURN  
ROSS, GEORGE H. HILL, T. T. BURK-  
HART, JOHN E. AITCHISON, and F. M.  
WARREN,

Defendants.

The Bill of Complaint of the Complainant, N. Coy,  
a citizen and resident of the State of Massachusetts,  
against the defendants above named, The Title Guar-  
antee & Trust Company, a corporation, J. Thorburn  
Ross, George H. Hill, T. T. Burkhart, John E. Aitch-  
ison and F. M. Warren, citizens and residents of the  
State of Oregon.

To the Judges of the Circuit Court of the United  
States for the District of Oregon:

The complainant above named, N. Coy, complain-  
ing on behalf of himself and of all other stockhold-  
ers and creditors of the Defendant corporation, The

Title Guarantee & Trust Company, similarly situated who shall in due time appear and seek relief and pay and contribute to the expenses of this suit, brings this his Bill of Complaint against the Defendants above named, The Title Guarantee & Trust Company, J. Thorburn Ross, George H. Hill, T. T. Burkhart, John E. Aitchison and F. M. Warren, and thereupon and as and for such Bill your Orator, the said Complainant, now shows and alleges:

That your Orator is now and has been for many years past a citizen and resident of the State of Massachusetts; that the Defendant, The Title Guarantee & Trust Company, is a corporation duly incorporated and organized under the laws of the State of Oregon and has been such a corporation for more than ten years last past and is a citizen and resident of the State of Oregon, and the Defendants, J. Thorburn Ross, George H. Hill, T. T. Burkhart, John E. Aitchison and F. M. Warren are each and all of them citizens of the State of Oregon and residents therein.

## II.

That the defendant, The Title Guarantee & Trust Company, has been ever since the incorporation and organization thereof and for more than ten years last past, a banking corporation existing under the laws of the State of Oregon, engaged in and conducting a banking business in the City of Portland, receiving deposits, making loans, acting in various fiduciary capacities and transacting business usually appertaining to banks, banking and trust corporations, including in its said business the owning, conducting, oper-

ating and maintaining safety deposit vaults and boxes and abstracts of title; That the Defendants, J. Thorburn Ross, George H. Hill, T. T. Burkhart, John E. Aitchison and F. M. Warren are and have been for some time past directors of the Defendant corporation and are stockholders therein and hold, own and control a very large proportion of the stock of said The Title Guarantee & Trust Company, and said Defendants have been and still are conducting and managing the business of said banking corporation; that the said corporation has, owns, and possesses assets and property consisting of bonds, notes, cash, real estate, mortgages, bank fixtures, abstracts and chains of title, safety deposit boxes and vaults and other properties, including the lease of the premises occupied by said banking corporation in the City of Portland, of the value of about \$2,500,000.00; That said Defendant corporation at this time is indebted to various persons, firms, corporations and banks and has liabilities outstanding against it as follows:

Demand deposit, aggregating the sum of	
about .....	\$ 1,130,000.00
Savings deposits due and payable on 60	
days demand, about .....	410,000.00
Time certificates of deposit, about.....	175,000.00
Demand certificates of deposit, about....	315,000.00
Moneys due various banks and banking	
institutions, about .....	610,000.00
Making a total indebtedness and liability	
of said Defendant corporation of	
about .....	2,640,000.00

That of the property and assets of said bank at the time of the commencement of this suit there was in cash in the possession of said Defendant bank only an inconsiderable sum, the precise amount your Orator could not learn, available for the payment to depositors of the moneys due them and subject to be called for and for the payment of the other liabilities of said bank and to enable it to conduct and transact its current business; that the capital stock of said corporation is \$250,000.00, the whole of which amounting to \$250,000.00 has been subscribed and paid for.

### III.

Your Orator further alleges that he is now and has been for some time prior to the commencement of this suit a stockholder of the Defendant bank owning and holding 592 shares of the capital stock thereof.

### IV.

Your Orator further alleges that of the liabilities of said Defendant bank there is due and payable on demand to depositors and other creditors of said bank the sum of \$1,500,000 and over; that the business of said banking corporation has been continued up to the present time, but owing to the feverish condition of the financial world and the unrest and uncertainty which has largely developed within the past few weeks, large demands of the moneys kept in reserve by the Defendant bank for the purpose of meeting the requirements of its depositors and paying the liabilities of the Defendant bank have been withdrawn from said bank and said Defendant bank has not now sufficient cash, other resources assets or available



means, nor can it obtain the same, with which to continue its business or to liquidate its said indebtedness and meet the obligations from time to time required to be met in the ordinary course of its business.

Your Orator further alleges that because of the disordered condition of the times and the stringency in the money market and a lack of confidence in property values, the selling value or the amount that could be realized upon the securities and assets of the Defendant bank has largely depreciated.

V.

Your Orator further alleges that late Monday afternoon or evening, October 28th, 1907, by reason of the conditions hereinbefore recited, the Governor of Oregon declared a legal holiday for five days and again, at the expiration of said period has declared another holiday and at the present time no business can be transacted by the Defendant bank.

Your Orator further alleges that owing to the present condition of affairs the directors and officers of the Defendant, The Title Guarantee & Trust Company, all of whom are Defendants to this suit, have concluded and determined that said bank is unable to continue its business and that said bank cannot reopen its doors and said directors and officers of the Defendant bank are unwilling to longer continue in the control and management and conduct of said Defendant bank, and your Orator avers the fact to be that said Defendant bank cannot safely continue or attempt to continue its said business for want of sufficient money and available resources so to do.

## VI.

Your Orator alleges that at the time of the commencement of this suit and just prior thereto, the Defendant banking corporation aforesaid was and it is now seriously embarrassed and in straitened circumstances, and is unable to carry on and continue its business and finds itself without adequate funds to pay its depositors the moneys due them and demanded, and a large number of actions and suits by attachment and otherwise are about to be commenced and prosecuted by various and numerous depositors and creditors of the Defendant bank; that the resources and assets of said Defendant bank are insufficient according to the present valuation thereof, largely the result of existing financial conditions, to pay off and discharge the obligations and liabilities of the Defendant bank.

That if the property and assets of the Defendant bank remain in the possession of said Defendant bank and subject to seizure and levy under attachment by the depositors and creditors of said bank upon their several claims, a general demoralization of the affairs and property of the Defendant bank will result therefrom, the property and assets of the Defendant bank largely dissipated and wasted in expensive litigation with its attendant costs and expenses; that much vexatious litigation against said Defendant Bank has been threatened and such threatened litigation will be accompanied by attachments and seizures which will give to those depositors and creditors prosecuting such litigation an undue and unfair advantage over



other depositors and creditors of the Defendant bank who are unable to or do not see fit to harrass and embarrass the Defendant corporation with such litigation, and some of the depositors and creditors of said bank might realize upon their said claims and a great majority in number and amount of the depositors and creditors of said Defendant bank would thereby wholly lose their claims and demands against said Defendant bank and nothing be realized by them thereon.

That the prosecution of such attachment suit and litigation threatened will tend largely to dissipate the assets of said Defendant bank, prevent an even and ratable division among the depositors and creditors of said bank of the assets thereof and will cause great loss to such depositors and creditors.

That the condition of the said Defendant bank is such that the winding up of said corporation and the division of its assets along the creditors of said Defendant bank is necessary.

That it is impracticable for the Defendant corporation to make a general assignment for the equal benefit of its creditors under the provisions of the general assignment laws of the State of Oregon for the reason that the bond required of the assignees will be very large one and difficult to procure and for the further reason that the assets of the said bank cannot be as well or as satisfactorily protected, conserved and distributed among the parties entitled thereto as can be done by a receiver appointed by this honorable court.

## VII.

Your Orator further alleges that if said property and assets of the said Defendant bank were taken possession of and conserved under the order and direction of this honorable Court, and a receiver appointed by this Court to take charge of said property and assets and convert the same into cash and distribute the same pro rata among the depositors and creditors of said Defendant a large portion, if not the entire amount of the total indebtedness and liabilities of said Defendant bank will be paid to said depositors and creditors; that the bulk of the property and assets of the Defendant banking corporation including moneys on hand, bonds, bills receivable and other property and assets constitute a special fund out of which the depositors of said The Title Guarantee & Trust Company are entitled to satisfaction of their demands; that the appointment of a receiver to take charge of and protect the property and assets of the Defendant corporation and convert the same into cash and distribute the same among the depositors and creditors of said Defendant bank according to their respective interests therein is necessary and advisable and the only way to prevent the institution and prosecution of many suits and actions against the Defendant bank and by means of which a race of diligence between the depositors and creditors can be avoided, a large amount of costs and expense incident upon such litigation obviated, and the destruction and dissipation of the property of said bank prevented. That unless this honorable Court in the exercise of its equity powers

shall interfere and protect and preserve the property and assets of the Defendant bank and appoint a receiver who shall take possession of the same and handle and dispose of the property and assets of said Defendant bank under the direction of the Court and decree a distribution of the proceeds thereof as equity shall require the said property and assets will be in great danger of destruction and dissipation and most of the creditors and depositors of said Defendant bank will be unable to realize upon any part of their claims and demands.

#### VIII.

That the matter in controversy in this suit exceeds the sum and value of \$2000.00, exclusive of interest and costs.

IN CONSIDERATION WHEREOF, and for as much as your Orator is remedyless in the premises at and by the strict rules of common law and is relievable only in a court of equity where matters of this nature are properly cognizable and relievable, to the end therefore that said Defendants may appear and answer all and singular the matters and things hereinbefore set forth and complained of but not on oath, the answer under oath being waived by your Orator, may it please your Honors to grant unto your Orator the relief herein prayed for, viz: a decree of this honorable Court requiring the Defendants and each of them to answer the allegations and charges herein made; that this Court in the exercise of its equity powers take possession of the property and assets of said Defendant, The Title Guarantee & Trust Com-

pany, and appoint a receiver herein to protect and conserve and manage the assets of said banking corporation, acting under the orders and direction of this honorable Court to the end that there may be collected and converted into cash the property and assets of the Defendant corporation and that this Court will cause the same to be distributed pro rata among the depositors and creditors of said Defendant corporation, or according to the interests that they may have therein; that your Orator and all persons who may make themselves parties to this suit and contribute to the expenses of maintaining and prosecuting the same, be granted the relief or decreed payment of the moneys due them as depositors and creditors out of the property and assets of the Defendant bank; That the Defendants and each of them and the officers, agents and employees of the Defendant corporation be enjoined and restrained from making any disposition of or interfering with the property and assets of the said corporation and that the Court award your Orator and all others making themselves parties hereto such other and further relief as may be meet and proper in a Court of Equity.

May it please your Honors to grant unto your Orator a writ of subpoena to be directed to said Defendants, and each of them, commanding them and each of them at a certain time and under certain penalty therein to appear before this honorable Court and then and there full, true, direct and perfect answer make, but not on oath, to all and singular the premises and further to stand and perform and obey such further

order, direction and decree therein as to this honorable Court shall seem agreeable to equity and good conscience.

DOLPH, MALLORY, SIMON & GEARIN,  
Solicitors for Complainant.

District of Oregon, ss:

I, Joseph Simon, being first duly sworn, say on oath that I am one of the attorneys for the Complainant in the above entitled suit; that I have read the foregoing Bill of Complaint and know the contents thereof, and that the facts therein contained are true as I verily believe.

Joseph Simon.

Subscribed and sworn to before me this ..... day of November, 1907.

(SEAL) Chester V. Dolph,  
Notary Public for Oregon.

[Endorsed]: Bill of Complaint. Filed November 6, 1907.

J. A. SLADDEN,  
Clerk.

And afterwards, to wit, on the 6 day of November, 1907, there was duly filed in said Court, an Appearance, in words and figures as follows, to wit:

**[Appearance of Defendants.]**

*In the Circuit Court of the United States for the  
District of Oregon.*

N. COY,

Plaintiff.

vs.

THE TITLE GUARANTEE & TRUST COMPANY, a Corporation, J. THORBURN ROSS, GEORGE H. HILL, T. T. BURKHART, JOHN E. AITCHISON and F. M. WARREN,

Defendants.

We, the undersigned, Defendants in the above entitled suit hereby acknowledge due and personal service upon us, and each of us, of the Bill of Complaint in the above entitled suit, and the subpoena issued in pursuance thereof by delivery to each of us of a duly certified copy of said Bill of Complaint and subpoena at Portland in the District of Oregon on this 6th day of November, 1907.

We also enter our appearance in this suit and consent to the application of the Complainant for the appointment of a Receiver as prayed for in the said Bill of Complaint.

The Title Guarantee & Trust Co.,  
By J. Thorburn Ross, President.

J. Thorburn Ross

George H. Hill

T. T. Burkhart

Wm. A. Munley

Attorney for all of said defendants except F. M. Warren.

[Endorsed]: Appearance of Defendants. Filed  
Nov. 6, 1907.

J. A. SLADDEN,  
Clerk.



And afterwards, to wit, on the 25 day of July, 1913, there was duly filed in said Court, a Petition in Intervention, in words and figures as follows, to wit:

**[Petition in Intervention by Multnomah County  
et al.]**

*In the District Court of the United States for the  
District of Oregon, Ninth Judicial Circuit  
In Equity.*

N. COY,

Complainant,

vs.

THE TITLE GUARANTEE & TRUST COMPANY, a Corporation, J. THORBURN ROSS, GEORGE H. HILL, T. T. BURKHART, JOHN E. AITCHISON and F. M. WARREN,

Defendants.

In the Matter of the Insolvency and Receivership of the Title Guarantee & Trust Company.

No. 3209.

Intervention of the County of Multnomah, Oregon, and R. L. Stevens, Sheriff and ex-officio Tax Collector for Multnomah County, Oregon.

Now comes the County of Multnomah, Oregon, and R. L. Stevens, Sheriff and ex-officio Tax Collector for Multnomah County, Oregon, by their attorneys and respectfully represent to this honorable Court that they have an interest in and a preferred claim and

lien upon all the property and funds in the possession and under the control of the receiver herein, and pray that they, and each of them may be allowed to intervene in and become parties to the above entitled cause, and for cause of intervention your petitioners respectfully represent :

I.

That said petitioner, Multnomah County, Oregon, is and at all the times hereinafter mentioned was, a quasi-municipal corporation organized and existing under the laws of the State of Oregon as a political division and county thereof, and the said petitioner, R. L. Stevens is and at all the times hereinafter mentioned was the duly elected, qualified and acting Sheriff and ex-officio Tax Collector of and for said County of Multnomah.

II.

That on the 6th day of November, 1907, a receiver was duly and regularly appointed by this court to take charge of all the property, real, personal and mixed, of the above named Title Guarantee & Trust Company, and said receiver immediately thereafter duly qualified and entered upon the discharge of his duties as such receiver and thereupon took possession of all of said property and ever since has been and still continues in the possession and charge of said property.

III.

That for the years 1907, 1908, 1909 and 1910 taxes were duly and regularly assessed and levied for the support of the government of this State including



taxes levied for said county, municipal and other purposes upon and against the personal property so held and in the charge of said receiver under the direction of this court, but such taxes, with the exception of those assessed and levied for the year 1907, have not been paid; that the taxes remaining unpaid at this time, together with the legal penalty and interest thereon by reason of the delinquency in the payment thereof are as follows:

For the year 1908 .....	\$1,890.80
For the year 1909 .....	993.50
For the year 1910 .....	1,104.75

#### IV.

That said taxes, together with interest and penalty thereon, amounting at this time to the sum of \$3,-989.05, are a first and prior lien and claim upon all of the property in the hands of said receiver.

WHEREFORE your petitioners pray that the honorable Court may enter an order allowing your petitioners to intervene and become parties to this cause, and that an order be entered commanding the receiver herein to forthwith pay to your petitioners the full amount of the taxes assessed and levied upon the property in said receiver's hands, which are now delinquent, together with all the interest and penalty which has accrued thereon, and that your petitioners may have such other and further relief as may be agreeable to equity and for the costs of this intervention.

Emmons & Webster,  
Attorneys for Petitioners.

[Endorsed]: Intervention of Multnomah County and R. L. Stevens, Sheriff and ex-officio Tax Collector. Filed March 11, 1912.

A. M. CANNON,  
Clerk.

And afterwards, to wit, on the 4 day of April, 1912, there was duly filed in said Court, an Answer, in words and figures as follows, to wit:

**[Answer of Receiver to Petition in Intervention.]**

*In the District Court of the United States  
in and for the District of Oregon  
Ninth Judicial Circuit  
in Equity.*

N. COY,

Complainant,

vs.

THE TITLE GUARANTEE & TRUST COMPANY, a Corporation, J. THORBURN ROSS, GEORGE H. HILL, T. T. BURKHART, JOHN E. AITCHISON and F. M. WARREN,

Defendants.

In the Matter of the Insolvency and Receivership of  
The Title Guarantee & Trust Company.

No. 3209.

Answer of R. S. HOWARD, Jr., Receiver, to the Petition in Intervention of Multnomah County, R. L. Stevens, Sheriff and Ex-Officio Tax Collector thereof in the State of Oregon.

TO THE HONORABLE JUDGES OF THE  
ABOVE ENTITLED COURT:

The answer of R. S. Howard, Jr., receiver, to the petition in intervention of the County of Multnomah and R. L. Stevens, Sheriff and *ex officio* Tax Collector thereof in the State of Oregon, doth respectfully deny, admit, allege and represent:—

This receiver denies that the County of Multnomah and R. L. Stevens, Sheriff and *ex officio* Tax Collector thereof in and for the State of Oregon, has had or ever did have since and after the 6th day of November, 1907, a lien or claim, preferred or otherwise, upon any of the property or funds in the possession or under the control of the receiver herein; and this receiver in connection with said denial excepts to the said petition in intervention of said County of Multnomah and R. L. Stevens, Sheriff and *ex-officio* Tax Collector thereof in the State of Oregon, for insufficiency in this behalf, to-wit, that as matter of law on and after the 6th day of November, 1907, no property or funds or assets in the possession of the receiver were subject to taxation, for that the same were on that date and ever since have been and are now *in custodia legis* in the proceedings in this court in the above entitled cause for the liquidation and winding up of The Title Guarantee & Trust Company.

This receiver admits all of Paragraph I of said pretended petition in intervention, without conceding or admitting that a petition in intervention doth properly lie herein, and without admitting or conceding

that Multnomah County or R. L. Stevens, Sheriff and *ex officio* Tax Collector thereof in the State of Oregon, hath or should have any right, title or claim to satisfy or proceed for in respect of taxes, as alleged in said petition in intervention, in any court, and this receiver denies that Multnomah County or R. L. Stevens, Sheriff and *ex officio* Tax Collector thereof in said State of Oregon, hath any such right, either to tax or proceed for a tax, since the 6th day of November, 1907.

This receiver admits all the matters and things alleged in Paragraph II of said pretended petition in intervention, consisting of lines 9 to 17 on page 2 thereof.

This receiver denies that Multnomah County, acting through its officers, did attempt to assess, levy and charge against personal property in the possession of this receiver, as alleged in Paragraph III in said pretended petition in intervention, the taxes therein specified and set forth for the purposes therein specified and set forth, and admits that none of the said alleged pretended taxes have been paid, but admits that the tax regularly assessed for 1907 and which accrued and was properly a preferred claim and lien for taxes and which accrued prior to the 6th day of November, 1907, was duly paid; that as to whether or not the amounts for the years 1908, 1909 and 1910, as specified in said Paragraph III, are the amount of taxes assessed and levied, this receiver hath no knowledge or information sufficient to form a belief, and therefore denies the same, calling for proof in that particu-

lar; but this receiver expressly denies that any taxes for the years 1908, 1909 or 1910 were duly or at all or ever regularly or at all or ever assessed or levied upon and against the personal property so held and in the charge of the receiver herein under direction of this court.

This receiver denies each and every matter and thing stated and alleged in Paragraph IV in said pretended petition in intervention, lines 5 to 8, page 3 thereof, and every part of the same and the whole thereof; and doth deny that any of said sum whatever arising as alleged is or can be a first or prior or any lien or claim upon any of the property in the hands of this your receiver.

And in and about the matters and things in said pretended petition in intervention on behalf of Multnomah County and R. L. Stevens, Sheriff and *ex officio* Tax Collector thereof in the State of Oregon, alleged, this receiver doth say that all of the officers of Multnomah County as well as said R. L. Stevens, Sheriff and *ex officio* Tax Collector thereof, at all times knew and were informed that on and after the 6th day of November, 1907, all of the property and assets of The Title Guarantee & Trust Company came into the custody of the United States Circuit Court in and for the District of Oregon then sitting; afterwards and now the above entitled court by virtue of the act approved and passed March 3, 1911, by the Congress of the United States, and that at the time of the purported levies and assessments said property then was and ever since has been and now is in the custody of said court

and under the administration of the law and procedure thereof being administered upon in proceedings to liquidate and wind up the Title Guarantee & Trust Company.

That all of said property against which said pretended assessment, levy and lien are charged to exist and are alleged to have been made consists of and was personal property estimated by the Assessor of Multnomah County to be then in possession of The Title Guarantee & Trust Company, whereas in truth and in fact the said Assessor, B. D. Sigler of Multnomah County, then well knew and knows now that all of the personal property against which assessment was made and said pretended tax asserted and levied was personal property in the custody of the law in the possession of this court in the liquidation and winding up of The Title Guarantee & Trust Company, and not otherwise owned or possessed.

That all of said personal property against which said pretended tax for the years 1908, 1909 and 1910 is alleged to have been levied and made was and is held by said receiver for the benefit of a large and multitudinous number of creditors, savings depositors and general claimants of The Title Guarantee & Trust Company, the major part of whom, if not all, as to which this receiver for the obvious reason of the multitudinous number of the same cannot specify in particular, were assessed in their own names and right for personal property taxes in respect of the amounts of personal property then held by them and being liquidated and wound up in these proceedings for the bene-



fit of said creditors; that Multnomah County and R. L. Stevens, Sheriff and *ex officio* Tax Collector thereof, has received and obtained from said persons their due proportion of personal property tax; that to assert and claim against the receiver for the years 1908, 1909 and 1910 accordingly further tax upon personalty is double, excessive, non-uniform taxation without warrant of law.

That American Surety Company of New York, a large claimant in the personal property and assets of The Title Guarantee & Trust Company, paid to the State of Oregon vast sums of money in liquidation of the State of Oregon claims arising in The Title Guarantee & Trust Company transactions conducted by it with respect to State moneys, and by the payment thereof became subrogated to and stood in the place of a large number of claims and demands against The Title Guarantee & Trust Company which are the subject of the taxation alleged in the pretended petition in intervention for the very years of 1908, 1909 and 1910, in addition to which said American Surety Company of New York paid its tax to the said State of Oregon as required by law for and in respect of the business done by it in said State and upon the subrogated demands arising by reason of the aforesaid transactions.

That likewise William M. Ladd, intervenor herein and petitioner by virtue of his agreements of guaranty for allowed and approved claims of depositors against The Title Guarantee & Trust Company, including savings deposits and other accounts, himself paid and discharged personal property taxes for the years specified

in the alleged petition in intervention upon moneys, accounts and demands all of them severally included in the subrogations arising to him by reason of the advances of money under said guarantees for the benefit of the depositors of said Title Guarantee & Trust Company, as more particular reference to the records of the court herein in these proceedings will specifically show, said reference being now thereunto had.

That over and beyond these particular instances large numbers of other persons too numerous to mention and whom this receiver cannot particularly specify likewise, as hereinbefore generally alleged, paid personalty taxes upon personal property arising from and out of the affairs of The Title Guarantee & Trust Company in their particular names assessed.

That Multnomah County and R. L. Stevens, Sheriff and *ex-officio* Tax Collector thereof in the State of Oregon, should not now be allowed or heard to allege and say that an alleged or pretended independent assessment and levy against personal property in the possession of said receiver could or should be collected from, or was a preferred or prior or first or any lien whatsoever upon property, funds and assets now in the possession of said receiver.

And in this behalf this receiver further presents and alleges that upon all realty found as part of the assets of The Title Guarantee & Trust Company and upon which the burden and expense of raising revenue for the government of the State and municipalities of Oregon were properly and duly assessed giving taxation at the rate and in the amount and for the times speci-



fied in said alleged petition in intervention, said taxes were duly paid.

But forasmuch as this is and was a proceeding for the liquidation and winding up of The Title Guarantee & Trust Company, all of the personal property and transitory assets of the said Title Guarantee & Trust Company came in and within the exclusive administration of this court and, as aforesaid, the custody of the law, and there was no person other than those entitled to receive the same against whom any personal property tax could be assessed.

The personal property taxes in the State of Oregon are under the laws of taxation and revenue in said State, and were for the years 1908, 1909 and 1910, assessable and leviable only against the person, i. e., *in personam* and not *in rem*.

That the pretended assessments for 1908, 1909 and 1910 of personal property tax against said receiver, if made as alleged in said petition in intervention of the said County of Multnomah and R. L. Stevens, Sheriff and *ex officio* Tax Collector thereof in the State of Oregon, were illegal and void.

WHEREFORE, your receiver prays that he may be relieved of and from the entry of an order herein requiring your receiver to pay the amount of said alleged taxes or the claimed interest or the claimed penalty thereon, or of any order whatever herein other than one denying the petitioners the alleged right which they claim herein, and that the petition in intervention herein be dismissed, and that the petitioners in intervention be denied any other, further or differ-

ent relief, and that this receiver be as to said petition in intervention dismissed without day, and that he have his costs herein.

R. S. HOWARD, Jr.,  
Receiver.

W. C. BRISTOL,  
Counsel for Receiver.

[Endorsed]: Answer. Filed April 4, 1912.

A. M. CANNON,  
Clerk.

And afterwards, to wit, on the 8 day of May, 1913, there was duly filed in said Court, a Petition in Intervention, in words and figures as follows, to wit:

**[Petition in Intervention by Multnomah County.]**

*In the District Court of the United States for the  
District of Oregon.*

UNITED STATES OF AMERICA,

District of Oregon.—ss:

PETITION—3209

N. COY,

vs.

TITLE GUARANTEE & TRUST CO., Et al.

Comes now the City of Portland, County of Multnomah and State of Oregon, by Walter H. Evans, District Attorney for the Fourth Judicial District of the State of Oregon, and represents to the above entitled court and to its officers and agent the Receiver of the Title Guarantee and Trust Company, that the said

Title Guarantee and Trust Company is indebted to the City of Portland, to the County of Multnomah and to the State of Oregon, on account of personal taxes as follows, to-wit:—

Personal Taxes year 1908.....	\$1304.00
Penalty for non-payment .....	130.40
and interest at rate of 12% from April 6th, 1909 until paid.	

Personal Taxes year 1909 .....	747.00
Penalty for non-payment .....	74.70
and interest at rate of 12% from April 5th, 1910 until paid.	

Personal Taxes for year 1910 .....	913.00
Penalty for non-payment .....	91.30
and interest at rate of 12% from April 4th, 1911 until paid.	

Personal Taxes for year 1911 .....	\$1012.60
Penalty for non-payment .....	101.26
and interest at rate of 12% from April 2nd, 1912, until paid.	

That a statement of said delinquent taxes is attached hereto and marked exhibit "A," hereby referred to and made a part hereof. That the same is verified by the affidavit of E. S. Huckabay, Chief Deputy in the Tax Collecting Department of the Sheriff's Office, Multnomah County, Oregon.

Petitioner prays an order of Court directing the Receiver of the above entitled Company to pay unto the

Tax Collector of Multnomah County, Oregon, the full sum due on account of said taxes, including penalties and interest thereon.

WALTER H. EVANS,

District Attorney in and for  
The Fourth Judicial District,  
County of Multnomah, State  
of Oregon.

AFFIDAVIT.

STATE OF OREGON,  
County of Multnomah.—ss:

I, E. S. Huckabay, being duly sworn, depose and say that I am Chief Deputy in the Office of the Tax Collector for Multnomah County, Oregon, that I have prepared the tax statements attached to the affidavits showing the delinquent taxes due from the Title Guarantee and Trust Company, for the years 1908, 1909, 1910 and 1911, and that the statements hereto attached are true statements of the taxes and penalties due from the said Title Guarantee and Trust Company for the years 1908, 1909, 1910 and 1911, and that the full amounts thereon stated are due and owing and no part of the same has been paid.

E. S. HUCKABAY.

Subscribed and sworn to before me this the 8th day of May, A. D. 1913.

(Seal)

S. S. LAMONT,  
Notary Public for Oregon.

[Exhibit "A".]

DELINQUENT TAX

This statement must be returned when taxes are paid.

Portland, Ore., April 25th, 1913.

Title Guarantee & Trust Co.

Dr. to Multnomah County

For State, State School, County, Road, Port of Portland, and School District Taxes for the year 1908 and City of Portland Taxes for the year 1909 on the following described property:

No. of

Certifi- cate	Sch. dist.	Page	Line	Descrip- tion	Total Value	Amount of Tax
Del.	65200	6782	16	Personal Tax	65200	1304.00
				Penalty		130.40
						<hr/>
						1434.40

Interest 12 % per annum from 1st Monday of April 1909 to date of payment.

Postage stamps and checks of non-residents not received in payment of taxes. Remit by Bank Draft, Express or Postoffice Money Order, payable to T. M. Word, Sheriff.

Address all communications to

T. M. WORD, Tax Collector,  
Portland, Oregon.

DELINQUENT TAX

This statement must be returned when taxes are paid.

Portland, Ore., April 25th, 1913.

Title Guarantee & Trust Co.

Dr. to Multnomah County

For State, State School, County, Road, Port of Portland, and School District Taxes for the year 1909 and City of Portland Taxes for the year 1910 on the following described property:

No. of							
Certifi-	Sch.			Descrip-	Total	Amount	
cate	dist.	Page	Line	tion	Value	of Tax	
Del.	41500	6708	46	Personal Tax	41500	747.00	
				Penalty		74.70	
							<hr/>
							821.70

Interest at 12% per annum from 1st Monday of April 1910 to date of payment.

Postage stamps and checks of non-residents not received in payment of taxes. Remit by Bank Draft, Express or Postoffice Money Order, payable to T. M. Word, Sheriff.

Address all communications to

T. M. WORD, Tax Collector,  
Portland, Oregon.

### DELINQUENT TAX

This statement must be returned when taxes are paid.

Portland, Ore., April 25th, 1913.

Title Guarantee & Trust Co.

Dr. to Multnomah County

For State, State School, County, Road, Port of

Portland, and School District Taxes for the year 1910 and City of Portland Taxes for the year 1911 on the following described property:

No. of

Certifi- cate	Sch. dist.	Page	Line	Descrip- tion	Total Value	Amount of Tax
Del.	41500	6782	45	Personal Tax	41500	913.00
				Penalty		91.30
						<hr/> 1004.30

Interest 1% per mo. from 1st Monday of Apr. 1911 to date of payment.

Postage stamps and checks of non-residents not received in payment of taxes. Remit by Bank Draft, Express or Postoffice Money Order, payable to T. M. Word, Sheriff.

Address all communications to

T. M. WORD, Tax Collector,  
Portland, Oregon.

### DELINQUENT TAX

This statement must be returned when taxes are paid.

Portland, Ore., April 25th, 1913.

Title Guarantee & Trust Co.

Dr. to Multnomah County

For State, State School, County, Road, Port of Portland, and School District Taxes for the year 1911 and City of Portland Taxes for the year 1912 on the following described property:



No. of Certifi- cate Del.	Sch. dist. 41500	Page 6891	Line 27	Descrip- tion Personal Tax	Total Value 41500	Amount of Tax 1012.60
						101.25
						<hr/> 1113.85

Interest 12% per annum from 1st Monday of April 1912 to date of payment.

Postage stamps and checks of non-residents not received in payment of taxes. Remit by Bank Draft, Express or Postoffice Money Order, payable to T. M. Word, Sheriff.

Address all communications to

T. M. WORD, Tax Collector,  
Portland, Oregon.

[Endorsed]: Petition. Filed May 8, 1913.

A. M. CANNON,  
Clerk.

Filed May 8, 1913.

A. M. CANNON,  
Clerk U. S. Court.

And afterwards, to wit, on the 22 day of May, 1913, there was duly filed in said Court, an Answer, in words and figures as follows, to wit:

[Answer of Receiver to Petition of W. H. Evans.]

*In the District Court of the United States in and  
for the District of Oregon, Ninth Judicial  
Circuit in Equity.*

N. COY,

Complainant,

vs.



THE TITLE GUARANTEE & TRUST COMPANY,  
PANY, a Corporation, J. THORBURN ROSS,  
GEORGE H. HILL, T. T. BURKHART,  
JOHN E. AITCHISON and F. M. WARREN,  
Defendants.

In the Matter of the Insolvency and Receivership of  
The Title Guarantee & Trust Company.

No. 3209

Answer of R. S. Howard, Jr., Receiver, to the Petition in Intervention of Walter H. Evans, District Attorney in and for the Fourth Judicial District, County of Multnomah, State of Oregon.

TO THE HONORABLE JUDGES OF THE ABOVE  
ENTITLED COURT:—

The answer of R. S. Howard, Jr., receiver, to the petition in intervention of Walter H. Evans, District Attorney in and for the Fourth Judicial District, County of Multnomah, State of Oregon, for and on behalf of the City of Portland and the County of Multnomah and the State of Oregon, doth respectfully deny, admit, allege and represent:—

That on the 11th day of March, 1912, an intervention was filed herein by the County of Multnomah through R. L. Stevens, Sheriff and *ex officio* Tax Collector for Multnomah County for the matters and things stated and alleged in the present petition in intervention preferred by the said Walter H. Evans for and on behalf of the said City of Portland and the County of Multnomah and the State of Oregon and

said matter upon said petition in intervention so filed is pending in the above entitled court upon the answer of R. S. Howard, Jr., receiver, thereto filed on the 4th day of April, 1912.

That neither the City of Portland, the County of Multnomah or the State of Oregon are entitled to join or be heard jointly upon another and similar petition in intervention or to be heard in intervention upon the same matter and in the same cause while the petition first filed herein is pending.

This receiver denies that the County of Multnomah, the City of Portland or the State of Oregon or either of them has had or has now or ever did have since and after the 6th day of November, 1907, a lien or claim of any kind or nature whatsoever upon any of the property or funds in the possession or under the control of this court herein and in the hands of this receiver for taxes assessed or levied upon any such property.

This receiver denies that any levy or assessment for taxes upon personal property in the hands of this court and its said receiver on and after the 6th day of November, 1907, could have been made in the name of The Title Guarantee & Trust Company; and denies that The Title Guarantee & Trust Company is indebted to the City of Portland or the County of Multnomah or the State of Oregon or to either of them in the sums and amounts, either for tax or for penalty or for interest, as set forth in the petition of the said Walter H. Evans or in the statement of taxes attached thereto and marked "Exhibit A," and this receiver, as a

further part of his answer and in connection with the denial aforesaid, excepts for insufficiency in this behalf to the said petition in intervention of the City of Portland, of the County of Multnomah and of the State of Oregon in that as matter of law on and after the 6th day of November, 1907, no property or funds or assets of The Title Guarantee & Trust Company were assessed as such to The Title Guarantee & Trust Company; that the same were on that day and ever since have been and are now *in custodia legis* and that The Title Guarantee & Trust Company under a bill of complaint in this court was then in liquidation and being wound up.

That this receiver makes and incorporates herein as a part of this answer so much of and all of that part of his answer to the petition in intervention of R. L. Stevens as is set forth following, that is to say:—

“This receiver denies that the County of Multnomah and R. L. Stevens, Sheriff and *ex officio* Tax Collector thereof in and for the State of Oregon, has had or ever did have since and after the 6th day of November, 1907, a lien or claim, preferred or otherwise, upon any of the property or funds in the possession or under the control of the receiver herein; and this receiver in connection with said denial excepts to the said petition in intervention of said County of Multnomah and R. L. Stevens, Sheriff and *ex officio* Tax Collector thereof in the State of Oregon, for insufficiency in this behalf, to-wit, that as matter of law on and after the 6th day of November, 1907, no property or funds or assets in the possession of the receiver were subject to taxation, for

that the same were on that date and ever since have been and are now *in custodia legis* in the proceedings in this court in the above entitled cause for the liquidation and winding up of The Title Guarantee & Trust Company.

This receiver admits all of Paragraph I of said pretended petition in intervention, without conceding or admitting that a petition in intervention doth properly lie herein, and without admitting or conceding that Multnomah County or R. L. Stevens, Sheriff and *ex officio* Tax Collector thereof in the State of Oregon, hath or should have any right, title or claim to satisfy or proceed for in respect of taxes, as alleged in said petition in intervention, in any court, and this receiver denies that Multnomah County or R. L. Stevens, Sheriff and *ex officio* Tax Collector thereof in said State of Oregon, hath any such right, either to tax or proceed for a tax, since the 6th day of November, 1907.

This receiver admits all the matters and things alleged in Paragraph II of said pretended petition in intervention, consisting of lines 9 to 17 on page 2 thereof.

This receiver denies that Multnomah County, acting through its officers, did attempt to assess, levy and charge against personal property in the possession of this receiver, as alleged in Paragraph III in said pretended petition in intervention, the taxes therein specified and set forth for the purposes therein specified and set forth, and admits that none of the said alleged pretended taxes have been paid,

but admits that the tax regularly assessed for 1907 and which accrued and was properly a preferred claim and lien for taxes and which accrued prior to the 6th day of November, 1907, was duly paid; that as to whether or not the amounts for the years 1908, 1909 and 1910, as specified in said Paragraph III, are the amount of taxes assessed and levied, this receiver hath no knowledge or information sufficient to form a belief, and therefore denies the same, calling for proof in that particular; but this receiver expressly denies that any taxes for the years 1908, 1909 or 1910 were duly or at all or ever regularly or at all or ever assessed or levied upon and against the personal property so held and in the charge of the receiver herein under direction of this court.

This receiver denies each and every matter and thing stated and alleged in Paragraph IV in said pretended petition in intervention, lines 5 to 8, page 3 thereof, and every part of the same and the whole thereof; and doth deny that any of said sum whatever arising as alleged is or can be a first or prior or any lien or claim upon any of the property in the hands of this your receiver.

And in and about the matters and things in said pretended petition in intervention on behalf of Multnomah County and R. L. Stevens, Sheriff and *ex officio* Tax Collector thereof in the State of Oregon, alleged, this receiver doth say that all of the officers of Multnomah County as well as said R. L. Stevens, Sheriff and *ex officio* Tax Collector thereof, at all

times knew and were informed that on and after the 6th day of November, 1907, all of the property and assets of The Title Guarantee & Trust Company came into the custody of the United States Circuit Court in and for the District of Oregon then sitting, afterwards and now the above entitled court by virtue of the act approved and passed March 3, 1911, by the Congress of the United States, and that at the time of the purported levies and assessments said property then was and ever since has been and now is in the custody of said court and under the administration of the law and procedure thereof being administered upon in proceedings to liquidate and wind up The Title Guarantee & Trust Company.

That all of said property against which said pretended assessment, levy and lien are charged to exist and are alleged to have been made consists of and was personal property estimated by the Assessor of Multnomah County to be then in possession of The Title Guarantee & Trust Company, whereas in truth and in fact the said Assessor, B. D. Sigler of Multnomah County, then well knew and knows now that all of the personal property against which assessment was made and said pretended tax asserted and levied was personal property in the custody of the law in the possession of this court in the liquidation and winding up of The Title Guarantee & Trust Company, and not otherwise owned or possessed.

That all of said personal property against which said pretended tax for the years 1908, 1909 and 1910 is alleged to have been levied and made was and is



held by said receiver for the benefit of a large and multitudinous number of creditors, savings depositors and general claimants of The Title Guarantee & Trust Company, the major part of whom, if not all, as to which this receiver for the obvious reason of the multitudinous number of the same cannot specify in particular, were assessed in their own names and right for personal property taxes in respect of the amounts of personal property then held by them and being liquidated and wound up in these proceedings for the benefit of said creditors; that Multnomah County and R. L. Stevens, Sheriff and *ex officio* Tax Collector thereof, has received and obtained from said persons their due proportion of personal property tax; that to assert and claim against the receiver for the years 1908, 1909 and 1910 accordingly further tax upon personalty is double, excessive, non-uniform taxation without warrant of law.

That American Surety Company of New York, a large claimant in the personal property and assets of The Title Guarantee & Trust Company, paid to the State of Oregon vast sums of money in liquidation of the State of Oregon claims arising in The Title Guarantee & Trust Company transactions conducted by it with respect to State moneys; and by the payment thereof became subrogated to and stood in the place of a large number of claims and demands against The Title Guarantee & Trust Company which are the subject of the taxation alleged in the pretended petition in intervention for the very

years of 1908, 1909 and 1910, in addition to which said American Surety Company of New York paid its tax to the said State of Oregon as required by law for and in respect of the business done by it in said State and upon the subrogated demands arising by reason of the aforesaid transactions.

That likewise William M. Ladd, intervenor herein and petitioner by virtue of his agreements of guaranty for allowed and approved claims of depositors against The Title Guarantee & Trust Company, including savings deposits and other accounts, himself paid and discharged personal property taxes for the years specified in the alleged petition in intervention upon moneys, accounts and demands all of them severally included in the subrogations arising to him by reason of the advances of money under said guaranties for the benefit of the depositors of said Title Guarantee & Trust Company, as more particular reference to the records of the court herein in these proceedings will specifically show, said reference being now thereunto had.

That over and beyond these particular instances large numbers of other persons too numerous to mention and whom this receiver cannot particularly specify likewise, as hereinbefore generally alleged, paid personalty taxes upon personal property arising from and out of the affairs of The Title Guarantee & Trust Company in their particular names assessed.

That Multnomah County and R. L. Stevens, Sheriff and *ex officio* Tax Collector thereof in the State

of Oregon, should not now be allowed or heard to allege and say that an alleged or pretended independent assessment and levy against personal property in the possession of said receiver could or should be collected from, or was a preferred or prior or first or any lien whatsoever upon property, funds and assets now in the possession of said receiver.

And in this behalf this receiver further presents and alleges that upon all realty found as part of the assets of The Title Guarantee & Trust Company and upon which the burden and expense of raising revenue for the government of the State and municipalities of Oregon were properly and duly assessed giving taxation at the rate and in the amount and for the times specified in said alleged petition in intervention, said taxes were duly paid.

But forasmuch as this is and was a proceeding for the liquidation and winding up of The Title Guarantee & Trust Company, all of the personal property and transitory assets of the said Title Guarantee & Trust Company came in and within the exclusive administration of this court and as aforesaid, the custody of the law, and there was no person other than those entitled to receive the same against whom any personal property tax could be assessed.

The personal property taxes in the State of Oregon are under the laws of taxation and revenue in said State, and were for the years 1908, 1909 and 1910, assessable and leviable only against the person, i.e., *in personam* and not *in rem*.

That the pretended assessments for 1908, 1909

and 1910 of personal property tax against said receiver, if made as alleged in said petition in intervention of the said County of Multnomah and R. L. Stevens, Sheriff and *ex officio* Tax Collector thereof in the State of Oregon, were illegal and void."

and doth make the same a part of this answer herein in so far as the same is material and relates to the same subject matter of taxation upon personal property for the years set forth in the petition of the said Evans.

And further answering this receiver doth say it was well known to the City of Portland and to the County of Multnomah and to the State of Oregon and the officials acting for them in the assessment and levying of taxes that on the 6th day of November, 1907, The Title Guarantee & Trust Company was not a person in law against whose property an assessment for personal property tax could be made for that all of its property, real, personal and mixed, was then in the hands of the officers of this court in the course of administration in the winding up and liquidation of said company and there was no other persons other than those entitled to receive the proceeds thereof against whom any personal property tax could be assessed.

That an assessment made against The Title Guarantee & Trust Company for the years 1908, 1909, 1910 and 1911 in the sums and amounts set forth in the petition of the said Evans are not valid and legal assessments in law nor in accordance with law so as to entitle the City of Portland, the County of Multnomah or the State of Oregon to enforce the same.

WHEREFORE, your receiver prays that he may be relieved of and from the entry of an order as prayed for in the petition in intervention; that the estate in his hands and under the administration of this court be declared free and clear of any claim for personal property taxes for the years 1908, 1909, 1910 and 1911; that the prayer of the petitioners be denied and that the petitions in intervention herein be dismissed and that the receiver have such other, further and different relief as in consonance with equity he may be entitled to.

R. S. HOWARD, Jr.,  
Receiver.

W. C. BRISTOL,  
Counsel for Receiver.

[Endorsed]: Answer. Filed May 22, 1913.  
A. M. CANNON,  
Clerk.

And afterwards, to wit, on the 25 day of July, 1913,  
there was duly filed in said Court, a Demurrer,  
in words and figures as follows, to wit:

**[Demurrer to Answer to Petition in Intervention.]**

*In the District Court of the United States for the  
District of Oregon, Ninth Judicial Circuit,  
in Equity.*

N. COY,  
Complainant,

vs.

THE TITLE GUARANTEE & TRUST COM-  
PANY, a corporation, J. THORBURN

ROSS, GEO. H. HILL, T. T. BURKHART,  
JOHN E. AITCHISON and F. M. WARREN,  
Defendants.

In the matter of the Insolvency and Receivership  
of the Title Guarantee & Trust Company.

No. 3209.

To the Honorable Judges of the above entitled Court:

Come now the petitioners, the County of Multnomah, Oregon, and the Sheriff and ex-officio Tax Collector for said County and State and demur to the new matter contained in the answer of R. S. Howard, Jr., Receiver, to the petition in intervention filed herein by said petitioners, for the reason and upon the ground that said new matter does not constitute a defense to the matters and things set forth in said petition, nor does it set forth facts sufficient to show any reason why the said receiver should not be ordered to pay the taxes on the property in his hands, which were assessed and levied thereon as set forth in said petition.

EMMONS & WEBSTER,  
Attorneys for Petitioners.

[Endorsed]: Demurrer to Answer. Filed July 25,  
1913.

A. M. CANNON,  
Clerk.

And afterwards, to wit, on the 23 day of March, 1914,  
there was duly filed in said Court, an Opinion, in  
words and figures as follows, to wit:



[Opinion of the Court.]

*In the District Court of the United States for the  
District of Oregon.*

N. COY,

Complainant,

vs.

THE TITLE GUARANTEE & TRUST COM-  
PANY, a Corporation, J. THORBURN  
ROSS, GEORGE H. HILL, T. T. BURK-  
HART, JOHN E. AITCHISON and F. M.  
WARREN,

Defendants.

W. C. Bristol for the Receiver,

Walter H. Evans, District Attorney for Multnomah  
County,

Emmons & Webster for Petitioners.

WOLVERTON, District Judge:

Two petitions in intervention have been filed in the above matter by Multnomah County, praying that the receiver be required to pay the State, County, School and Municipal taxes assessed against The Title Guarantee & Trust Company, on certain personal property, for the years 1908 to 1911, inclusive, with penalties and interest.

A receiver was appointed for The Title Guarantee and Trust Company by this court on November 6, 1907, and the taxes which it is sought to have paid were assessed against the company a part of the time in its name alone, and a part of the time in the name of the company, R. S. Howard, Jr., Receiver.

The receiver resists payment on several grounds. First, it is urged that the law has made no provision for the assessment of receivers, and, having made none, they are not taxable as such.

As it respects assessment and taxation, the statute of Oregon has made all property, whether real or personal, subject thereto. Section 3551 Lord's Oregon Laws. By section 3560 it is required that every person shall be assessed as to his personal property, whether owned by him or under his control as trustee, guardian, executor or administrator, in the county in which he resides. Section 3563 provides that personal property of every private corporation is liable to taxation in the same manner as the personal property of a natural person, and shall be assessed in the name of such corporation, in the county where its principal place of business is, unless otherwise specially provided by law. The manner of assessment is provided by section 3593, which requires the assessor to set down on his roll, first, the names of all persons assessable in his county, and, among others, the taxable personal property owned by or to be taxed to such person. These are the principal provisions of the statute which in any way affect the present controversy, and it is clear that ample provision is made thereby for the assessment of a corporation.

But it is urged that "We are dealing with property here represented by a court through its receiver, and there is no method of assessment provided for corporate property."

The appointment of a receiver by a court does not

destroy the entity of the corporation. It yet remains with corporate power, at least for the purpose of winding out the business of the concern, for it is corporation business always that the receiver transacts.

All property being taxable, and corporations being liable to taxation, it is inconceivable that a suit in chancery and the appointment of a receiver by operation of law withdraws the corporate property from the power of assessment and taxation. Nor was it necessary that the receiver should, *eo nomine*, be designated as a person subject to assessment and taxation. He is but an arm of the court in the management of the corporation property, whether it be as a going concern or in process of dissolution, and the court holds the property subject to all the burdens and limitations to which the corporation itself was subject under the law, and one of these is the liability to taxation as a natural person. I am clear that a receivership does not withdraw the corporation from that liability. As is said by Mr. Chief Justice Fuller:

“Undoubtedly property so situated (in custodia legis) is not thereby rendered exempt from the imposition of taxes by the government within whose jurisdiction the property is, and the lien for taxes is superior to all other liens whatsoever, except judicial costs, when the property is rightfully in the custody of the law.”

In *Re Tyler*, 149 U. S. 164, 182.

And it has been held that property in the hands of a receiver is properly assessable as the property of the corporation. Fed. Cas. No. 13405.

Nor is it important to whom the assessment is made, whether to the corporation or to the receiver. It is not vital to the validity of the tax. *Wiswall v. Kunz*, 173 Ill. 110.

Under the system for tax collections within this state a tax does not become a debt, and an action at law does not lie for its recovery. Nor is the tax upon personal property made a lien thereon, nor does any lien attach until a warrant is levied, and it may happen, as where the property of the person taxed is taken into another state or disposed of, that the tax collector will be left remediless in forcing collections. *Marion County v. Woodburn Mercantile Co.*, 60 Or. 367.

But where property remains within the jurisdiction and within the hands of the person taxed, there is no impediment to the enforcement of the payment of the personalty tax assessed against him.

It is beyond question at this date that when a court has appointed a receiver, his possession is the possession of the court for the benefit of the parties to the suit and all concerned, and cannot be disturbed without proper leave of the court. *In re Tyler*, *supra*: *Barton v. Barbour*, 104 U. S. 126; *Krippendorf v. Hyde and Another*, 110 U. S. 276.

Property so held may be said to be in equitable sequestration to answer the purposes of the receivership, and if it is sought to enforce an equitable lien or other demand which is a rightful charge against the property, it must be done by leave and under the sanction of the court so having the possession. The

levy of a tax warrant is a sequestration, like the levy of an ordinary *fiere facias*. Hence such levy could not in any greater degree be permitted to disturb the court's possession without its explicit sanction previously procured. *Ex parte Huidekoper et al.*, 55 Fed. 709; *Oakes v. Myers*, 68 Fed. 807; *Ledoux v. La Bee*, 83 Fed. 761.

In the present case there has been no attempt to levy a warrant, but it is urged, going back of the warrant, that there was no authority for the assessor, the property being in *custodia legis*, to assess the property, or for the proper officers to levy the tax, without leave of the court, and that the tax therefore is without validity, and should not be ordered paid out of the estate.

Seeing that property in the hands of a receiver is subject to assessment and taxation, I am of the opinion that the assessment and levy of the tax, since an invasion of the possession of the receiver is unnecessary to effect the purpose, is regular and valid. Being so, it is the duty of the court to require payment of the taxes levied if there be funds in the hands of the receiver applicable thereto. It was so held by the Supreme Court of Missouri where, as in this state, a personalty tax was not a lien upon the property taxed, and where also, as here, the state has the right to payment out of the assets paramount to other creditors. *Greeley v. The Provident Savings Bank et al.*, 98 Missouri 458.

"Having such paramount right," says the court in *Central Trust Co. v. N. Y. C. & N. R. R. Co.*, 110 N. Y.

250, 257, "the court may, in its discretion, listen to the petition of the state, through its attorney general, and direct its officer to make the payment asked for."

Indeed, the court may not only do so, but there is an imperative duty incumbent upon it to take cognizance of the laws of the state relative to assessment and taxation, and to require of its receivers payment of such taxes as are just and regularly levied, out of any assets they may have in their hands applicable thereto. See *In re Tyler*, *supra*, and *George et al v. St. Louis Cable & W. Ry. Co.*, 44 Fed. 117, 119.

This renders it clear that taxes levied upon the personalty of the corporation for the years 1908, 1909, 1910, and 1911, should be discharged, and equally clear that the court should direct the receiver to pay them.

But it is further urged that the receiver should not be required to pay the penalty and interest, notwithstanding the taxes have been long delinquent. Of this we may now inquire.

Taxes under the statute governing, as it relates to the collection of these now in controversy, were made payable on the first Monday of April of each year, with the provision that if one-half of such taxes were paid by the 15th day of March, the time of payment for the remaining one-half should be extended until the first Monday of October. It is further provided, however, that should the remaining half not be paid on the first Monday in October, the taxpayer should be subject to a penalty of ten per cent on the amount of the taxes remaining due, and also be subject to the



payment of 12 per cent interest thereon from the first Monday in April until paid. Section 3682 Lord's Oregon Laws. By the following section it is made the duty of the tax-collector immediately, on the first Monday of May in each year, to proceed to collect all taxes levied whereof one-half was not paid on or before the first Monday of April. And so also to collect all taxes that might remain unpaid by the first Monday of October, together with the penalty of 10 per cent and the interest thereon at 12 per cent per annum.

It will be seen that a direct penalty is imposed for nonpayment of taxes when due, but there is a further burden imposed upon the taxpayer to pay interest at the rate of 12 per cent per annum. This interest is double the legal rate of interest otherwise fixed by statute, and is above the rate which parties may charge by express agreement. While the statute calls it interest, it is very obvious that it operates as a penalty, and I am impelled to the conclusion that the exaction of the 10 per cent and the 12 per cent called interest must each be regarded as in effect a penalty for the nonpayment of taxes when due.

Now, in the case at bar the taxing officers were early advised that the receiver would resist the payment of taxes assessed against personal property within his hands. This before any of the taxes in question were levied. While it may be the duty of the receiver to pay the taxes legitimately due, or to apply to the court for authority to do so, yet when a question has arisen touching the validity of the tax,

and the taxing officers are advised of that fact, the duty is all the more incumbent upon the tax collector to proceed promptly in the proper way to require the payment of such tax. Under present conditions, there was no way for the tax collector to proceed other than to apply to the court for an order requiring the payment by the receiver. In such procedure the legality of the tax could well be determined, and, if found proper, the order for payment would reasonably follow.

But the tax collector was not required to enforce collection until after the taxes became delinquent. He should have proceeded immediately, however, on the first Monday in May of each year. At this time the penalty of 10 per cent had been incurred, and the interest at 12 per cent had accrued for the time intervening from the first Monday in April. If prompt application had been made to the court, further penalty would not have been visited upon the receiver. I think this should have been done, and the tax collector should not have waited one, two, three and four years before attempting to enforce the tax in the only way in which it could be done. For this reason, I am not inclined to burden the estate with the accruing interest from and after the first Monday in May each year as it relates to the taxes for the several years involved. This conclusion is sustained by the principle announced in the cases of *County Com'rs of Prince George's Co. &c. v. Clarke & Berry*, 36 Maryland 206, and *Blakistone v. State*, 117 Maryland, 237.

The receiver will therefore be directed to pay the

State, County, School and Municipal taxes for the years 1908, 1909, 1910 and 1911, together with the penalty of 10 per cent on the amount of the tax for each year, and the interest of 12 per cent accruing between the first Monday in April and the first Monday in May, and such will be the order of the court.

And afterwards, to wit, on the 27 day of March, 1914, there was duly filed in said Court, a Petition for Rehearing, in words and figures as follows, to wit:

**[Petition for Rehearing.]**

*In the District Court of the United States in and for the  
District of Oregon, Ninth Judicial Circuit,  
in Equity.*

N. COY,

Complainant,

vs.

THE TITLE GUARANTEE & TRUST COMPANY,  
a corporation, J. THORBURN ROSS,  
GEORGE H. HILL, T. T. BURKHART,  
JOHN E. AITCHISON and F. M. WARREN,  
Defendants.

In the Matter of the Insolvency and Receivership of  
The Title Guarantee & Trust Company.

No. 3209.

In the Matter of the Intervention of Multnomah County for Personal Property Taxes.

Petition upon the part of the Receiver for a rehearing against the decision given and rendered herein on the

23rd day of March, 1914, as per copy of opinion filed.

To the Honorable Judges of the Above Entitled Court:—

The receiver herein recognizing the rule that requires him to abide by the directions and orders of the Court herein, but respectfully deeming it his duty to call to the Court's attention matters and things which it may have overlooked and to cause it to be more fully informed, and deeming that the Court has overlooked and not fully informed itself upon the matters and things relative to the intervention of Multnomah County for the payment of personal property taxes, doth represent and show that a reconsideration and rehearing should be had of the determination or decision reached by the Court on the 23rd of March, 1914, as per opinion herein filed, for the following reasons:—

*FIRST.*

That the Court did not decide or determine and apparently overlooked the Fourth contention of the receiver in the main brief at page 2 reading as follows:—

“*FOURTH.* That all of the so-called personal property mentioned in the intervening petitions, if assessed to The Title Guarantee & Trust Company, has been and was doubly assessed, for that all of such property was the property of the creditors and claimants who presented their claims to the receiver and had said claims approved and allowed during the times and for amounts which represented the actual conversion of the personal property of The Title Guarantee & Trust Company into liquidated assets which were in turn distributed to said creditors and claimants who in turn paid personal

property taxes assessed to each of them individually, and hence it is not competent for Multnomah County to claim that during the same time and in respect to the same property other personal property taxes could be assessed against and collected from The Title Guarantee & Trust Company or its estate."

### SECOND.

That the Court apparently in its opinion construes The Title Guarantee & Trust Company, as in other like cases, a going concern for the purpose of considering the submission of property belonging to it to taxation, but in this the Court has overlooked and has not decided upon the Fifth ground of the receiver's contention which is set forth on page 3 of the main brief herein, to-wit:—

"*FIFTH.* The affairs of The Title Guarantee & Trust Company are not in the nature of an operated concern kept alive by a receivership and administered by the court, but upon the 2nd day of November, 1907, it became insolvent, admitted its insolvency, its officers came into court and surrendered the company to the court, the court took possession of it, appointed its receiver and there has been no corporate management subsequent to such control, except only for the purpose of a more full and better administration of this court."

### THIRD.

That for so much of the property as was assessed to The Title Guarantee & Trust Company only and not to R. S. Howard, Jr., receiver thereof, the Court has overlooked and decided apparently for the payment of all of

said tax or taxes as if the same had in the first place been assessed against a going concern temporarily involved in a receivership, while the records and facts of record in this proceeding and in this Court show The Title Guarantee & Trust Company did not during any of the times and was not during any of the times said taxes claimed for are purported to have been assessed doing any business in the State of Oregon and this was a point made on the argument and in the briefs and not passed on by the Court in its decision, the main brief on the question on this point saying, at bottom of page 4 and top of page 5, as follows: —

“But this receivership is not a receivership of a going concern nor during the pendency of the litigation, but is an actual administration by the court of corporate property surrendered not only by the corporate entity itself, but by the officers representing it and given into the possession of the court for the purpose of being administered and distributed to creditors, who, as the administration has proceeded, have themselves been assessed upon the amounts of personalty coming into their possession.”

And again at page 10 of said main brief as follows:—

“BUT IN THIS CASE WE ARE NOT PRESENTED WITH A SITUATION UPON EITHER PETITION OF A TAX ACTUALLY ATTACHING TO PROPERTY PREVIOUS TO ANY POSSESSION BY THE COURT. THE TAX FOR 1907 COULD NOT BE LEVIABLE AS A MATTER OF LAW UNTIL AFTER THE



1st OF JANUARY, 1908, AND THE BOARD OF EQUALIZATION DID NOT SIT AND DETERMINE THE TAX ROLL ASSESSMENT UNTIL OCTOBER, 1907, AND BEFORE THE AMOUNT OF THE TAX COULD BE COMPUTED FOR THE YEAR 1908 ALL OF THE PROPERTY OF THE TITLE GUARANTEE & TRUST COMPANY HAD PASSED INTO POSSESSION OF THE COURT, HENCE WE HAVE NOT A CASE PRESENTED HERE WHICH IS LIKENED TO THE CASES THAT ORDINARILY ARISE IN THE MATTER OF IMPOSITION OF TAXES UPON GOING RECEIVERSHIPS."

*FOURTH.*

It was a proposition made in the main brief and ample authority was cited showing the practice in the State of Oregon to be fixed in that regard that it is the law of the State of Oregon that a Court of equity is without power to render a money judgment for the amount of personal property taxes, but said point was apparently overlooked by the Court and the cases cited in the main brief on page 11 not considered by it, the said point being made in language and cited cases as follows:—

"Furthermore, it is the law in the State of Oregon that a court of equity is powerless to render a money judgment for the amount of personal property taxes.

Phills v. Kelly, 12 Or. 213;

Ming Yue v. Coos Bay Railroad, 24 Or. 392;

Steamer v. Scottish Insurance Co., 33 Or. 65;

Denny v. McCown, 34 Or. 47;

Multnomah County v. Portland Cracker Co., 49  
Or. 352."

*FIFTH.*

The Court apparently overlooked and did not consider the cases cited in the main brief on page 13 as follows:—

"Ex parte Chamberlain, per curiam opinion, 55  
Fed. 704 to 709;

Burleigh v. Chehalis County, 75 Fed. 873;

Virginia Steel & Iron Co. v. Bristol Land Co.,  
88 Fed. 134;

Pennsylvania Steel Co. v. New York City Rail-  
way Co., 193 Fed. 286; same case, 176 Fed.  
477."

The foregoing cases are cited, explained and applied on pages 13 to 18 of the main brief, but seem to have escaped the attention of the Court.

*SIXTH.*

And the principle differentiating this case from the class of cases where going corporations are in the hands of receivers seems to have been overlooked by the Court in applying *Central Trust Company v. New York City Northern Railroad*, 110 N. Y. 256, for this Court does not touch upon the fact that where a corporation surrenders itself, as was done by *The Title Guarantee & Trust Company*, in a winding up suit for liquidation of all of its property that said property does not remain property of the corporation, but becomes and is property of its creditors; and this Court overlooked and has not determined in its decision the question that such

property so belonging to creditors was not in the mind of the framer of the statutes said to provide for the assessment of taxes against personal property of a corporate business in any such case.

*SEVENTH.*

The decision of the Court as given seems to go upon the point that there being statutes authorizing the assessment of personal property that such personal property is assessable in the hands of a receiver and that the receiver should pay the tax, whereas in truth and in fact there is no such statute in the State of Oregon providing for the assessment of personal property in the custody of the law and in the course of liquidation through a Court where that property then is not in the physical possession of any one other than the Court; and in this regard the Court further overlooks the points made in the argument and in the reply brief filed December 19, 1913, herein, in which reply brief the following was presented to the Court which it has apparently overlooked in the opinion now rendered:—

“The position of the counsel for the intervenor, Multnomah County, does not answer the legal points presented upon argument or in the brief of the receiver first filed.

The whole position of the intervenor presupposes a valid tax and a right to collect that tax *as if* it were assessed against The Title Guarantee & Trust Company as a going concern.

It was conceded in court and upon the argument that The Title Guarantee & Trust Company ceased

to be a going concern on the 6th day of November, 1907.

The Title Guarantee & Trust Company at the time of the assessments made in the record and for which the intervening petitioner seeks relief was not carrying on its business. It was closed. It had resigned all of its right to do business. There was neither vestige of control nor ownership in The Title Guarantee & Trust Company of any of the property formerly owned by it.

At the time of the pretended assessments the court represented the business and was conducting it. No other assessment was attempted to be made than those shown upon the assessment rolls produced in court."

#### *EIGHTH.*

The point was made upon the argument in the presentation of the case and in the briefs and specifically called to the attention of the Court again on pages 5 and 6 of the reply brief, as follows:—

“THE RECEIVER HAS ALL ALONG CONTENDED THAT THE PETITIONS IN THIS CASE WERE NOT SUFFICIENT TO JUSTIFY A RECOVERY. IT NOWHERE APPEARS THAT THE COUNTY OF MULTNOMAH EXHAUSTED ITS REMEDIES AS AGAINST THE REAL ESTATE IN THE NAME OF OR CLAIMED TO BE HELD BY THE TITLE GUARANTEE & TRUST COMPANY AND IT IS ONLY AGAINST REAL ESTATE OR AGAINST THE PERSONAL PROPERTY IT-

SELF *IN SITU* THAT THE DELINQUENCY CAN BE ENFORCED BY A WARRANT.

These proceedings have not been taken. It is admitted by counsel they could not take them because it would be a sequestration of the property in the hands of the federal court, but the law is that the remedies prescribed for the collection of the tax is exclusive. It therefore follows that if by reason of any situation the county could not exercise that remedy, that does not place in the hands of this court the power to decree a money judgment in favor of the county against the receiver."

*NINTH.*

The Supreme Court of the United States in the case of *United States v. Whitridge*, 227 U. S., 57 L. Ed. 701, affirmed the decision of the *Pennsylvania Steel Co. v. New York City* in 190 Fed. 777, and directly applies the principle that because the entity of a corporation ceased by the appointment of receivers there could necessarily be no income subject to return as against the receivers for corporation tax. Now the very point of this decision is that if, as the Court now holds in the opinion it has rendered, a corporation exists for the purpose of taxation as to property in the physical possession of its receiver, then the income of that property would necessarily be subject to taxation under the acts of congress, but the Supreme Court of the United States holds that it is not, and it is respectfully submitted that this Court in its decision has overlooked entirely the application of its receiver's contention in this, to-wit: That if this was a receivership of a going concern and

the property being run and not wound up and distributed to other people as their proved and allowed claims as determined and allowed have required, there would be ground for application of the cases which permit taxes to be levied, assessed and collected against receivership property; and it is submitted that the decision of the Court does not touch this view of the case, but adopts the other rule, namely, that taxes are always assessable against a corporation conducted by a receiver and such a rule is not applicable in this case for several reasons: First, there is no law to justify such an assessment; second, the evidence of the assessments as made were part of them to The Title Guarantee & Trust Company and not to the receiver at all; third, the assessments as made were as to property which passed into the hands of the distributees who are likewise assessed upon their personalty; fourth, there is not in the statute law of the State of Oregon any method of assessment of property in the hands of a Court being wound up through its processes of administration for the benefit of creditors; and, fifth, even bankruptcy courts and the statutes relative to administration of estates provide only for taxes *in esse* at the time of the commission of the act of bankruptcy or the death of the testator and taxes afterwards upon personalty are paid not by the bankruptcy estate or the estate of the decedent, but by those into whose hands the property is distributed.

*TENTH.*

The Court's opinion apparently disrewards the testimony and evidence taken in the hearing as given by the witness Chief of Field Work in the Assessor's office on



cross-examination on pages 39, 40, 41, 42, 43, 44 and 45, as follows:—

“Q. Did you find out, and refresh your memory about R. S. Howard, Jr., Receiver, business?

A. NO, I DIDN'T LOOK ANY FURTHER IN REGARD TO IT, MR. BRISTOL.

Q. I WILL CALL YOUR ATTENTION TO INTERVENOR'S EXHIBIT 2 AND ASK YOU IF I UNDERSTAND YOU CORRECTLY THAT THIS RED SHOWS THAT THE SAME SORT OF AN ARBITRARY ASSESSMENT WOULD BE MADE TO THE TITLE COMPANY FOR 1909?

A. EXACTLY.

Q. Exactly. So that if you had that statement here it would be just the same as that one?

A. IT WOULD BE ABSOLUTELY THE SAME. THE RED IS PUT ON THERE FOR THE BENEFIT OF THE ASSESSOR IN MAKING COMPARISONS EACH YEAR.

Q. I AM PARTICULARLY ANXIOUS TO KNOW WHETHER THE NAME OF THE RECEIVER WOULD BE UPON THAT ASSESSMENT OR THAT STATEMENT AT ALL?

A. WELL, THAT I COULD NOT TELL YOU.

Q. Well, it is not on that one, is it?

A. No. That I could not tell you. But the amounts here are taken, these amounts here are taken from the previous.

Q. Yes, I understand that; the previous roll?

A. Yes. But in regard to the name, why, I could

not tell you.

Q. Well now, this roll says, 'Title Guarantee & Trust Co.', don't it?

A. Yes.

Q. 'Character of business, banking'?

A. That is the item, the statement there, although the roll might include even more than that.

Q. All right; let's look at it. 6782, line 45, would represent the roll for 1910, wouldn't it?

A. Yes, sir.

Q. That is on Intervenor's Exhibit 2 and is the entry that shows that this statement was entered?

A. Yes, sir, that is it exactly.

Q. I notice on here in blue pencil, 'See Maxwell before entering.' What does that mean?

A. Well, evidently Mr. Maxwell asked something in regard to it. Maybe he wrote it himself. I don't know whether he did or not.

Q. Why was it that Maxwell was always the fellow that was particularly concerned here about this Title Guarantee & Trust Company tax apparently?

A. Well, that I don't know, otherwise than that he was chief deputy in the office. Otherwise I could not tell you.

Q. Now, I show you the 1909 roll at the point and place where line 46 appears, and ask you by what authority anybody would have to enter the name of the Receiver, in view of the fact that you told us this morning on your direct testimony that these entries here were made up from statements previously prepared and that this statement, Intervenor's Exhibit 2,

which you say is a proper one, does not show the name R. S. Howard, Jr., Receiver?

A. Well, that would not be any reason why that they could not be added to it, because it is not a tax roll, Mr. Bristol.

Q. Well, but I am getting at the fact that you stated—

A. (Interrupting) It could not be—

Q. (Interrupting) Now, wait a minute. Did I understand you correctly that the foundation for the roll itself is either a previous blank or a previous statement either actually made by the owner or arbitrarily made by the Assessor?

A. Yes, sir.

Q. Is that true?

A. That is true.

Q. Now then, it is also true, isn't it, that Intervenor's Exhibit 2, you told us was the same by reason of these red letters that you identify it by, was the same for 1909 as it was for 1910?

A. Yes, sir. These items—

Q. (Interrupting) Now then, these—

Mr. EVANS: (Interrupting) Wait until he gets his answer finished.

Mr. BRISTOL: All right. Go ahead.

WITNESS: These items are absolutely the same. (Indicating.) These may not be the same, because if this had changed hands and was under a different name, why, these items would appear, as this was assessment on the particular property.

Mr. EVANS: 'This' and 'these' don't get in the

record.

Q. (Mr. Bristol) So you did have some information then with regard to the future whether the institution changed hands, did you?

A. Oh, sure.

Q. Now, as a matter of fact, it had changed hands prior to 1909, hadn't it?

A. Yes; part of it was changed hands anyway, before that.

Q. No, but I am getting at the actual physical situation as to the Title Guarantee & Trust Company. Did not you as one of the Assessor's deputies, know that the Title Guarantee & Trust Company went into the hands of this court on November 2nd, 1907?

A. There is no doubt but what the Assessor knew it.

Q. Yes; all the time?

A. There is not any argument about that.

Q. Well, I don't know whether there is or not. What is the fact? You people representing Multnomah County knew that, didn't you? It was published in the papers and everywhere else?

A. There is no doubt about it.

Q. No. Now, what I think is particular material to us is that if the Receiver on the one hand was constantly contending, or making it appear, that there was no liability, and the Assessor was making it appear that there was a liability, and that arbitrary assessments were made in this way all the time to get a foundation for the rolls, how it came about that when we got the arbitrary assessment statement produced,

the Receiver's name is not on it, if there was an intention to assess the Receiver.

A. That does not make any difference, because this is not a roll.

Q. Which is not a roll?

A. This not the roll until after it is accepted as a roll. You see, this is simply the foundation of the tax roll. At the time that the Assessor marked this up, now—

Q. (Interrupting) What you are referring to as 'this', is book 6708 of 1909 tax?

A. Yes; any book, as far as that is concerned, that is included in the roll. I am making a general statement that so far as the Assessor was concerned, if the day before he turned this over to the Board of Equalization he had got information that these safety deposit vaults were only worth five hundred dollars he had a perfect right to change this to five hundred dollars. That is not violating any part of the law. And if he found R. S. Howard, Jr., was an owner of a part of it the day before he turned it over, he had a right to add R. S. Howard, Jr.'s. name so long as he notifies him.

Q. So long as he notifies him?

A. Yes.

Q. Have you got any proof that he ever notified him?

A. Yes.

Q. What?

A. The record shows, you know, the date of the notification, and that is the only person that he could

notify.

Q. Where is the record of notification in 1909 that you notified the Receiver?

A. We haven't got it here.

Q. You haven't got it here. Did you notify the Receiver?

A. I always do.

Q. Not the Title Guarantee & Trust Company, but the Receiver.

A. ALWAYS DO, BECAUSE THE ASSESSOR KNEW—THERE IS NO DOUBT BUT WHAT HE KNEW THE TITLE GUARANTEE & TRUST COMPANY WAS IN THE HANDS OF A RECEIVER AND THAT R. S. HOWARD, JR., WAS THE RECEIVER.

Q. NOW, MR. FUNK, JUST A MINUTE. I DON'T WANT YOU TO MAKE A STATEMENT THAT MIGHT BE INCORRECT.

A. I DON'T WANT TO, EITHER.

Q. I KNOW, BUT LISTEN. NOW LET ME REMIND YOU: YOU REMEMBER THAT GEORGE H. HILL WAS THE FIRST RECEIVER IN THIS COURT, DON'T YOU, AND THAT HE WAS REMOVED?

A. YES, I REMEMBER HE WAS, YES.

Q. AND YOU REMEMBER THAT NEXT TO GEORGE H. HILL CAME EDWARD C. MEARS, WHO WOULD BE THE RECEIVER IN THE YEAR THAT THIS ASSESSMENT WAS MADE, 1909.

A. Well then, probably Mr. Mears is the man



that—

Q. (Interrupting) Well then, how does it come that R. S. Howard's name is put there? That is just what I want to know.

A. WELL, IF MR. MEARS WAS THE RECEIVER AT THE TIME THAT THIS ROLL WAS TURNED OVER TO THE BOARD OF EQUALIZATION, I HAVEN'T ANY EXPLANATION.

Q. Yes. Well now, the roll for 1909 taxes—let's get it right now—the roll for 1909 taxes would be in the Board of Equalization in October of 1908, wouldn't it?

A. Yes, October of 1908.

Q. Wouldn't it?

A. No; October of 1909.

Q. Not the 1909 roll; that would be the ten roll.

A. The 1909 roll is 1909.

Q. The 1909 roll is 1909?

A. Yes.

Q. IN OTHER WORDS, THEN, IF THAT BE THE CASE, THERE IS TWELVE MONTHS YET IN OUR FAVOR THAT I DIDN'T KNOW ABOUT. THE ROLL FOR THIS YEAR OF 1913, FOR INSTANCE, WE WENT BEFORE THE BOARD AS TAXPAYERS IN OCTOBER, 1913?

A. That is correct.

Q. Now, that roll you don't collect on until after the 1st of March, 1914?

A. Yes.

Q. Is that right?

A. The 1st of February.

Q. The 1st of February, yes. Now then, this 1909 roll then would not be subject to collection upon it until the following 1st of February, 1910?

A. That is correct."

*ELEVENTH.*

Furthermore, the Court likewise disregarded and apparently overlooked the evidence and the concession that the only time and the first time that R. S. Howard, Receiver, was ever assessed was upon roll page 6119, line 12 for 1913, the present roll, pages of the record 79, 80 and 81, and the evidence does not disclose and there was not any evidence tending to show or prove that any assessment was made against property of The Title Guarantee & Trust Company or its receiver as a going concern or otherwise than as shown on said rolls in the name of The Title Guarantee & Trust Company as if it were a going concern.

*TWELFTH.*

That the Court was in error in holding and deciding in its opinion as follows, to-wit:

"But it is urged that 'We are dealing with property here represented by a court through its receiver, and there is no method of assessment provided for corporate property.'

The appointment of a receiver by a court does not destroy the entity of the corporation. It yet remains with corporate power, at least for the purpose of winding out the business of the concern, for it is corporation business always that the receiver transacts.

All property being taxable, and corporations being liable to taxation, it is inconceivable that a suit in chancery and the appointment of a receiver by operation of law withdraws the corporate property from the power of assessment and taxation. Nor was it necessary that the receiver should, *eo nomine*, be designated as a person subject to assessment and taxation. He is but an arm of the court in the management of the corporation property, whether it be as a going concern or in process of dissolution, and the court holds the property subject to all the burdens and limitations to which the corporation itself was subject under the law, and one of these is the liability to taxation as a natural person. I am clear that a receivership does not withdraw the corporation from that liability."

for the reason that therein the Court fails to note and discriminate the difference made and presented upon the argument, viz: THAT THIS PROCEEDING IS A WINDING UP AND LIQUIDATION SUIT AND THE CORPORATION IS NOT BEING RUN BY ITS OFFICERS OR MAINTAINED AS A CORPORATION, BUT ON THE CONTRARY SURRENDERED ITS CORPORATE ENTITY TO THE COURT, AND ALL OF ITS PROPERTY, AND PARTICULARLY ALL OF ITS PERSONAL PROPERTY, IS AND WAS BEING DISTRIBUTED WITHOUT REGARD TO ANY LAWFUL TAX LEVIED THEREON; and for the further and additional reason that the personal prop-

erty claimed to have been assessed was not the property of the corporation, but the trust fund for the creditors and claimants of the corporation who had proved and allowed claims against the same; and for the third and further reason that no business has ever been done by the corporation, The Title Guarantee & Trust Company, of any kind or nature whatsoever since the 2nd day of November, 1907, long prior to the alleged assessment of taxes on personalty herein, SO THAT THERE WAS NO PERSONAL PROPERTY OF THE CORPORATION TO BE ASSESSED IN THE SAME MANNER AS THAT OF A NATURAL PERSON NOR WAS THERE ANY PERSONAL PROPERTY IN THE HANDS OF THE RECEIVER ASSESSED DURING SAID PERIOD, THERE BEING NO SUCH CLASS OF PROPERTY DEFINED IN THE LAW FOR ASSESSMENT AND TAXATION IN OREGON.

*THIRTEENTH.*

That the Court erred in holding and deciding "But where property remains within the jurisdiction and within the hands of the person taxed, there is no impediment to the enforcement of the payment of the personalty tax assessed against him," for the reason that there was no property in the hands of R. S. Howard, Receiver, as distinguished from R. S. Howard, an officer of this Court holding said property in trust for the creditors of The Title Guarantee & Trust Company subject to the orders of said Court, and an assessment to The Title Guarantee & Trust Company as a corporation if, as and upon a personal property

assessment cannot be said to be a tax upon the property of a corporation or upon the property within jurisdiction and within the hands of the person taxed.

*FOURTEENTH.*

That the Court erred in holding and in deciding and in the application of the cases therein cited to the principle contended for as follows, to-wit:—

“Being so, it is the duty of the court to require payment of the taxes levied if there be funds in the hands of the receiver applicable thereto. It was so held by the Supreme Court of Missouri where, as in this state, a personalty tax was not a lien upon the property taxed, and where also, as here, the state has the right to payment out of the assets paramount to other creditors. *Greeley v. The Provident Savings Bank et al.*, 98 Missouri 458.

‘Having such paramount right,’ says the court in *Central Trust Co. v. N. Y. C. & N. R. R. Co.*, 110 N. Y. 250, 257, ‘the court may, in its discretion, listen to the petition of the state, through its attorney general, and direct its officer to make the payment asked for.’

Indeed, the court may not only do so, but there is an imperative duty incumbent upon it to take cognizance of the laws of the state relative to assessment and taxation, and to require of its receivers payment of such taxes as are just and regularly levied, out of any assets they may have in their hands applicable thereto. See *In re Tyler*, *supra*, and *George et al v. St. Louis Cable*

& W. Ry. Co., 44 Fed. 117, 119.

This renders it clear that taxes levied upon the personalty of the corporation for the years 1908, 1909, 1910, and 1911 should be discharged, and equally clear that the court should direct the receiver to pay them."

for that in the Greeley case from Missouri, as in the Central Trust case from New York, as applied herein the taxes were for those accrued and assessed prior to the actual proceedings in insolvency, BUT WE HAVE NO SUCH CASE PRESENTED HERE.

*FIFTEENTH.*

That the Court erred in holding and deciding "The receiver will therefore be directed to pay the State, county, school and municipal taxes for the years 1908, 1909, 1910 and 1911," for the reason that it appears, and the Court so holds, "In the case at bar the taxing officers were early advised that the receiver would resist the payment of taxes assessed against personal property within his hands. This before any of the taxes in question were levied"; and for the further reason that none of said taxes were assessed or collectible in any year for which the corporation was a going concern and in respect of which its personalty was assessable as that of a natural person as it did not do, as it did not transact and as it was incapable of transacting any business with respect to its personal property within the protection of the State, but all of the same was in the hands of its creditors through the administration of this Court.

WHEREFORE, your receiver prays that the Court



take cognizance of these matters and application of them give to the facts at bar before entering any final order herein upon said opinion, and that the Court reconsider and correct before entering any final order herein the decision and opinion made by the Court herein in such manner that the matters and things presented shall be decided so that the proceeds of property in the hands of the receiver may be conserved to application to proved and allowed claims and that the receiver may have more full and complete adjudication of the matters submitted and the receiver have such other, further and different relief in the premises as he may be entitled to.

R. S. HOWARD, Jr.,  
Receiver.

W. C. BRISTOL,  
Attorney for Receiver.

[Endorsed]: Petition for Rehearing. Filed March 27, 1914.

A. M. CANNON,  
Clerk.

And afterwards, to wit, on the 23 day of April, 1914, there was duly filed in said Court, an Order, in words and figures as follows, to wit:

**[Judgment Order.]**

*In the District Court of the United States for the  
District of Oregon.*

N. COY,

Complainant,

vs.

THE TITLE GUARANTEE AND TRUST COMPANY, a corporation, J. THORBURN ROSS, GEORGE H. HILL, T. T. BURKHART, JOHN E. AITCHISON and F. M. WARREN,

Defendants.

The court having heretofore, on, to-wit, the ..... day of ....., 1914, heard the testimony upon the questions raised by the two petitions in intervention of Multnomah County, praying that the receiver herein be required to pay the State, County, School, and Municipal taxes assessed against the Title Guarantee and Trust Company on certain personal property for the years 1908 to 1911 inclusive, together with the penalties and interest, and the court having heard the arguments, considered the briefs submitted, rendered its opinion thereon, and overruled a motion for re-hearing herein,

IT IS HEREBY ORDERED AND DIRECTED, that R. S. Howard, Jr., Receiver herein, pay to the TAX COLLECTOR of Multnomah County, on account of the State, County, School, and Municipal taxes assessed against the personal property of The Title Guarantee and Trust Company for the year 1908, the sum of \$1,304.00 in taxes, and the further sum of \$130.40, being 10 per cent penalty on the amount of the above taxes, and \$13.04 being interest on the above taxes at 12% from April 5, 1909 to May 5, 1909, and further that he pay forthwith to the Tax Collector of Multnomah County, on account of the State, County, School, and Municipal taxes assessed

against the personal property of The Title Guarantee and Trust Company for the year 1909, the sum of \$747.00 in taxes, and the further sum of \$74.70, being 10% penalty on the amount of the above taxes, and \$7.47, being interest on the above taxes at 12% from April 4, 1910 to May 4, 1910, and further, that he pay forthwith to the Tax Collector of Multnomah County, on account of the State, County, School and Municipal taxes assessed against the personal property of The Title Guarantee and Trust Company, for the year 1910, the sum of \$913.00 in taxes, and the further sum of \$91.30, being 10 per cent penalty on the amount of the above taxes, and \$9.13, being interest on the above taxes at 12% from April 3, 1911 to May 3, 1911.

Dated at Portland, Oregon, this 23rd day of April, A. D., 1914.

CHAS. E. WOLVERTON,

Judge.

[Endorsed]: Order. Filed April 23, 1914.

A. M. CANNON,

Clerk.

And afterwards, to wit, on the 13 day of March, 1914, there was duly filed in said Court, a Transcript of Evidence, in words and figures as follows, to wit:

[Testimony.]

*In the District Court of the United States for the  
District of Oregon.*

*In Equity.*

N. COY,  
vs.

TITLE GUARANTEE & TRUST COMPANY,  
a corporation, J. THORBURN ROSS,  
GEORGE H. HILL, T. T. BURKHART,  
JOHN E. AITCHISON and F. M. WARREN.

In the Matter of the Intervention of Multnomah County for Personal Property Taxes assessed to the Title Guarantee & Trust Company.

Be it Remembered that in the above entitled case the matter of Intervention came on regularly for trial, and the same was heard before the Honorable C. E. Wolverton, one of the Judges of the above entitled Court, on Wednesday, November 26, 1913, beginning at 10 o'clock A. M., Messrs. Emmons & Webster (Mr. Emmons) and Mr. Walter H. Evans, District Attorney of Multnomah County, Oregon, appearing for Multnomah County, Oregon, and Mr. W. C. Bristol appearing for R. S. Howard, Receiver of the Title Guarantee & Trust Company; whereupon the following proceedings were had, to-wit:

The COURT: Are the parties ready now in this case?

Mr. BRISTOL: The defense is ready, your Honor.

Mr. EVANS: May it please the Court, I find on inspecting the petition that was filed by myself here in this proceeding the stenographer in binding up the copies of the tax rolls instead of binding up one for each year, as the petition sets out the taxes, has inadvertently bound all of one year's lists in there, and I would ask leave to put the proper ones in there.

Mr. BRISTOL: Yes.

Mr. EVANS: I don't know whether your copy is

correct.

Mr. BRISTOL: Mine is exactly the same.

Mr. EVANS: The same thing?

Mr. BRISTOL: Yes. All the exhibits you have attached here are only the taxes for one year and show exemplifications for that particular period and none other, although your petition purports to show for the several years therein mentioned.

Mr. EVANS: It is clearly a clerical error, and I will ask leave to correct that by filing the proper ones.

The COURT: Very well.

Mr. EVANS: There are two petitions in this matter. The first one as filed sets forth the amount of the taxes and petitions for an order requiring the receiver to pay the taxes that were assessed on personal property of the Title Guarantee & Trust Company for the years 1908, 1909, 1910. The taxes for the year 1907 were paid.

Mr. BRISTOL: Your petition, though, asks for the taxes for 1907.

Mr. EVANS: No, I think not. We allege that they were assessed and levied for the years 1907, 1908, 1909 and 1910, but we say that such taxes with the exception of those assessed and levied for the year 1907 have not been paid. We admit they have been paid for the year 1907. There is no controversy as to that.

Mr. BRISTOL: Well, the point I am making, so the Court understands, is that we do not concede, never have conceded, and don't concede now, that the receiver ever paid any taxes for the year 1907 or any other year. They may have been paid, but that is

neither here nor there.

The COURT: Then that is simply not in controversy?

Mr. BRISTOL: Not in controversy.

Mr. EVANS: That is not in controversy. It doesn't make any difference whether the receiver paid them or did not pay them, they are not in controversy. Now in this petition setting forth the assessment and levy of these taxes, the receiver after denying certain allegations of the petition, comes in and sets up the fact that this property of the Title Guarantee & Trust Company came into his hands as receiver, and he has held it and continued to administer it as receiver, and for that reason that this property is not assessable because it is in the custody of the law, as I understand the petition. They set forth here this new matter, setting up the receivership and the custody, etc., and to that new matter the petitioner has filed a demurrer on the ground that there is no defense to the right of payment, to have an order for the payment of these taxes, and that question comes up under demurrer and it is a question whether the Court wishes to take that up separately or to consider the whole case at this time.

The COURT: Well, I suppose the whole matter will come up. The demurrer is to the whole matter, isn't it?

Mr. EVANS: Well, it seems to us that it does, but counsel for the receiver I believe takes a different position.

Mr. BRISTOL: I haven't taken any view at all.



You never brought your demurrer on for hearing. I neither concede your facts, nor the law. That is the issue. Now if the Court thinks it is convenient to hear the whole case, that is suitable to me. I don't care. If you want to try it on a matter of law, I am not conceding the point of law either.

The COURT: Are the facts disputed?

Mr. BRISTOL: Yes, your Honor, the facts are disputed.

Mr. EVANS: I think perhaps if the facts are disputed it might be shorter to introduce the evidence as to the assessment and levy and consider the questions of fact and law all together at one time, if that is satisfactory to the Court.

The COURT: Well, I suppose that would be just as well, and then you can argue the case, the demurrer along with the facts. Of course, I suppose the regular way would be to try out the demurrer, and then the Court pass on that, and then after the Court has ruled the matter would go to a hearing on the questions of fact. That would be the regular order.

Mr. EVANS: That was my idea. We had it set down several times, but it wasn't convenient for counsel a couple of times to have it come up, and I believe the last arrangement was that the case be set down and the whole matter tried out at one time. I am perfectly willing to take up the questions of law. It seems to me that the admissions in the answer here show—

The COURT: (interrupting): I was going to say, if counsel have agreed that the facts go in now, is

there much of them?

Mr. BRISTOL: No, your Honor. I don't think it will take them fifteen minutes, and it will relieve Mr. Evans of a lot of trouble with reference to his petition, and it seems to me we would get along faster. I will make a suggestion that Mr. Evans will state his position and I will state mine, and he will take such evidence as he wants to produce, I will put in such evidence as I want to, and then we will argue the questions of law.

Mr. EVANS: That will be suitable.

Mr. BRISTOL: That is, the whole case. I don't care. But I don't want to waive anything by that argument.

Mr. EVANS: No, no.

Mr. BRISTOL: So if you will state the issues from your standpoint I will state it from mine, and you may go ahead.

The COURT: Very well. You may do that.

Thereupon opening statements were made by the respective counsel, after which—

The following evidence was given on behalf of the Petitioner herein, to-wit:

E. S. HUCKABAY was produced as a witness on behalf of the Petitioner, and, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. EVANS:

Q. What official position do you hold in Multnomah County, Oregon?

A. Chief deputy of the tax collecting department of the Sheriff's office.

Q. I asked you to bring with you the assessment roll of Multnomah County for the years that the taxes are involved here. I will ask you what that book is you have now.

A. This is the assessment roll of personal taxes of the year 1908.

Q. That is a book brought from the records under your direction?

A. Yes.

Q. Will you call the Court's attention to the line indicating the assessment made for 1908 against the Title Guarantee & Trust Company.

A. It is shown on—

Q. (Interrupting) Just explain every item on there and read it off.

A. This is the regular form of assessment which was made up for the Assessor's office. This is the particular item in question here. The assessment was made for the year 1908 in the name of the Title Guarantee & Trust Company; address, Second and Washington street, and itemized as follows: Merchandise, stock in trade, sixty-two thousand five hundred dollars. Household furniture or office furniture, that is to include, two thousand seven hundred dollars; making a total value of taxable property of sixty-five thousand and two hundred dollars, on which a tax is imposed of one thousand three hundred and four dollars.

Mr. BRISTOL: Now are you through with that?

Mr. EVANS: Yes.

Mr. BRISTOL: Now will you identify the roll, please?

A. Yes.

Q. (Mr. Evans) That is taken from page—

A. (Interrupting) This is taken from page 6782.

Q. And line?

A. Line 16.

Q. Of what?

A. Of the 1908 tax roll of Multnomah County.

Mr. BRISTOL: What kind of a tax roll?

A. This includes state, county, municipal and school district tax.

Q. (Mr. Evans) On what description of property?

A. On personal property.

Mr. BRISTOL: What is the designation of the book?

Mr. EVANS: He said personal tax.

Mr. BRISTOL: Tax roll, personal?

A. Yes.

Mr. BRISTOL: Tax roll, personal and it runs in series numbers so that those pages just follow along through the whole roll?

A. Yes

Mr. BRISTOL: From A to Z?

A. That is right.

Q. (Mr. Evans) Has any part of that tax been paid?

A. No part of the tax has been paid.

Q. Here is the next one.

Mr. BRISTOL: We can probably expedite it a little, if you don't mind. I don't want to cross-examine your witness until you get through.

Mr. EVANS: Yes.

Mr. BRISTOL: Have you been in the office all the time since 1908?

A. Yes, sir.

Mr. BRISTOL: You have been one of the Sheriff's deputies, haven't you, for years?

A. Yes.

Mr. BRISTOL: Did you, or do you know whether the Sheriff did, ever notify the receiver of this personal property tax other than by the petition which is filed in this court? Can you say that?

Mr. EVANS: Objected to as incompetent, irrelevant and immaterial.

Mr. EMMONS: Let me refresh his memory here. Perhaps he could tell by looking at this.

Mr. EVANS: This is not from his office.

Mr. EMMONS: I didn't know but what he might know about it.

The COURT: You may answer the question.

A. There is a check mark here, which indicates that a notice has been mailed. We do that in all cases where notices are mailed.

The COURT: Simply a check mark?

A. A check mark; yes.

The COURT: What is the red check?

A. I just marked that so as to identify this particular item.

Q. (Mr. Evans) Then I will show you another

book that you have produced here and ask you to state what it is.

A. This is the personal tax roll for the year 1909, of Multnomah County.

Q. That includes taxes for what purposes?

A. It includes taxes for state, county, municipal and school district, and other purposes.

Q. And I will ask you to state whether or not there appears an assessment against the Title Guarantee & Trust Company there, and if so, on what line, and read it.

A. There is an item appearing on page 6708, line 46, assessment in the name of Title Guarantee & Trust Company, R. S. Howard, Junior, Receiver; address, Second and Washington; itemized as follows: Merchandise, stock in trade, \$40,000; furniture, household furniture, and so forth, \$1,500; making a total valuation on taxable property, personal, of \$41,500, upon which is imposed a tax of \$747, and of which no part has been paid.

Mr. BRISTOL: Mr. Evans, pardon me just a moment.

Mr. EVANS: Yes.

Mr. BRISTOL: With reference to this, your Honor, I call the witness' attention to the fact that item on line 46 seems to be entered in a different color ink and at a subsequent time to when the roll was written up. Can you tell me anything about that?

A. I don't know any reason why that was done.

Mr. BRISTOL: It shows on its face, does it not?

A. It shows that it is not in its proper order. I



will say that.

Mr. BRISTOL: And it shows the actual color of the ink?

A. There is an asterisk here, which calls attention to the fact there is something appearing below which should have been included in this particular place.

Mr. BRISTOL: Well, that is what I am asking you.

A. Yes.

Mr. BRISTOL: Can you tell me why, if that assessment was made as it is intended to appear there, it was not made when the tax roll was written up?

A. No, I don't know why.

Mr. BRISTOL: You don't know?

A. No.

Mr. BRISTOL: You only got this from the Assessor?

A. Yes, sir.

Mr. BRISTOL: He wrote up the roll and it came into your possession as one of the clerks in the county tax collector's office, and this was the condition in which it came to you?

A. That is true.

Mr. BRISTOL: And was the Title Guarantee & Trust Company and R. S. Howard, Receiver, put on there after this roll was in the possession of the tax collector?

A. This tax roll is just as it came from the County Assessor.

Mr. BRISTOL: The Assessor?

A. Yes, sir.

Mr. EVANS: Maybe, Mr. Bristol, we can find out whose handwriting that is and get some explanation.

Mr. BRISTOL: I know, but I wanted to call your attention to it. That is all.

The COURT: What is this assessment above here (indicating)?

A. Well, this is another; Title & Trust Company.

Mr. BRISTOL: That is the Title & Trust Company. That is another concern, your Honor.

Q. (Mr. Evans) I will ask you to state what this book is now I am exhibiting you?

A. This is the assessment and tax roll of Multnomah County for the year 1910.

Q. What property?

A. For state, county, municipal, school district, and other.

Q. Personal or real?

A. Personal tax.

Q. I will ask you to state whether or not there appears any assessment there against the Title Guarantee & Trust Company, and if so just read to the Court.

A. There is an assessment appearing on page 6782, line 45, in the name of the Title Guarantee & Trust Company; address, 240 Washington street, Room 2 Chamber of Commerce; it has two addresses; assessment as follows, itemized as follows: Merchandise, stock in trade, \$40,000; household furniture, and so forth, \$1,500; making a total assessment of \$41,500, of which there is a tax appearing of \$913.

Mr. BRISTOL: Now Mr. Evans, with your consent I will ask this witness, so as to keep that matter straight—

Mr. EVANS: Yes.

Mr. BRISTOL: I call your attention to the fact that this last roll you identified, on line 45, item Title Guarantee & Trust Co., says that the character of its business is then banking?

A. Yes.

Mr. BRISTOL: In the year 1910?

A. Yes.

Mr. BRISTOL: And locate its place of business at Room 2 Chamber of Commerce and at 240 Washington street; is that right?

A. Yes.

Mr. EVANS: Do you know what was at Room 2 Chamber of Commerce?

Mr. BRISTOL: Pardon me; is that roll in the original condition, so far as you know, that it was in when it was received by your office?

A. It is.

Mr. BRISTOL: And this roll bears evidence that the Title Guarantee & Trust Co. item on line 45 comes in its regular order this time, doesn't it?

A. It does.

Q. (Mr. Evans) Now the 1911 roll, I will ask you to state to the Court as you have before.

The COURT: This one is included too, is it?

Mr. EVANS: 1911 my petition includes.

Mr. BRISTOL: Let's see; 1908, 1909, 1910 and 1911.

A. This is the assessment and tax roll for Multnomah County for the year 1911 for taxes on personal property. It appears on page 6891, line 27, assessment in the name of the Title Guarantee & Trust Company, R. S. Howard, Junior, Receiver; character of business, safe deposit vaults; address, 2 Chamber of Commerce; itemized as follows: Merchandise and stock in trade \$40,000; household furniture, and so forth, \$1,500; making a total assessment of \$41,500, on which there is a tax of \$1,012.60.

Q. Have any of the taxes been paid about which you have testified?

A. None of them have been paid, no.

Q. Do you know what all is included under the headings household, and what is this tabulation?

A. Merchandise and stock in trade.

Q. Merchandise and stock in trade.

Mr. BRISTOL: Just a moment. Now that is objected to upon the ground that the assessment roll is an instrument which is fixed and certain, so far as the authorities have established it, and no parole evidence can be given to vary it in any way, shape or form. Merchandise and stock in trade are English words, having a certain and definite meaning; household furniture or office fixtures likewise; and no parole evidence is permissible to attach any other or different meaning thereto.

The COURT: You may answer the question.

A. I don't know of my own knowledge, except that it refers to statement which is a permanent record in the Assessor's office.

Q. That is the statement that is sent out for the person to make his return on, if he chooses to make it?

A. Yes.

The COURT: That does not include money, notes and accounts?

A. There is no item in this particular assessment under that heading.

The COURT: Well, I say merchandise and stock in trade does not include money, notes and accounts?

A. No.

Q. (Mr. Evans) Just read into the record, will you, please, what the different headings are that go to make up the personal tax roll, showing how you segregate all personal property and enter it on the tax rolls under what headings.

A. Merchandise, stock in trade, one item, machinery and equipment, railroad bed, under which is a division made for a segregation, showing the number of miles and the valuation; rolling stock is another item, which has also a provision made indicating the number of miles and the valuation; telephone and telegraph lines, with the same segregation as on railroad bed and rolling stock. Money, notes and accounts, shares of stock, value of farm machinery, implements, wagons and so forth; household furniture, and so forth; number of horses, value—and their value; number of cattle and their value; number of sheep and their value; number of swine and their value; number of dogs and their value; then a column showing total value of taxable property.

The COURT: I don't think it is necessary to go

into that.

Mr. EVANS: I just wanted to have the Court understand what all has been provided, or what headings.

Q. State whether or not you can tell from an inspection of these records whether notices were sent to the receiver of these taxes?

A. It is a procedure followed out by the Sheriff's office to make a check mark opposite each item immediately after a statement has been mailed.

Q. You don't know, of course, whether that was mailed to Mr. Howard as receiver, or just to the Title Guarantee & Trust Company at these different places?

A. Probably addressed to the address as given on the tax roll.

Mr. BRISTOL: What address is that?

A. 2 Chamber of Commerce, showing on the 1911 roll.

Q. (Mr. Evans) Does the 1911 roll—did you read all that was itemized there?

A. Yes.

Q. Safe deposit?

Mr. BRISTOL: Yes.

Mr. EVANS: That is all.

Cross-Examination.

By Mr. BRISTOL:

Q. But the 1911 roll just read, and to which Mr. Evans has called your attention, does not purport to assess the receiver, does it?



A. Now I could not say.

Q. Well, state what the fact is; under the name of the taxpayer it obviously puts the name Title Guarantee & Trust Company, doesn't it?

A. Yes, sir.

Q. Is that what it shows there?

A. Yes.

Q. And outside of that is, in brackets, R. S. Howard, Jr., Receiver, isn't it?

A. Yes.

Q. And then it says after that, safe deposit vaults, doesn't it?

A. Yes, sir.

Q. Then it says underneath—is that supposed to be relative to this item below, or the same item?

A. Titles and abstracts.

Q. This (indicating). That is another party, is it?

A. Yes.

Q. So all you have in here is safe deposit vaults?

A. Yes. That is, under the character of business is safe deposit vaults.

Q. You were not assessing this as a banking institution this time, were you?

A. We didn't make the assessment.

Q. Well, I mean so far as that assessment roll comes to you it don't purport to be an assessment on a banking business, does it?

A. Why, it is not itemized sufficiently that I can answer that question.

Q. Well, it don't show to you, nor to anybody else

that would examine it, would it, from its face, that it was upon a banking business, notes and accounts and evidences of indebtedness, that entered into banking business, does it?

A. Not unless you mean to use different items.

Q. No. Well, the different items are not entered, are they?

A. Except merchandise and—

Q. (Interrupting) And stock in trade?

A. And stock in trade.

Q. Now I call your attention to the fact that on the previous roll of 1910 there is no mention of the name of the receiver at all, is there?

A. No, it is not mentioned.

Q. I call your attention to the one before that, which was in 1909, and after the name of the Title Guarantee & Trust Company is inserted along on the same line written afterwards R. S. Howard, Junior, Receiver?

A. That is true.

Q. Now on that particular year I call your attention to the fact they gave the address as Second and Washington street?

A. Yes.

Q. But in 1911 they gave the address as Number 2 Chamber of Commerce?

A. That is true.

Q. Don't you know, as a matter of fact, that the safe deposit vaults of the Title Guarantee & Trust Company, that is, explicitly of the Title Guarantee & Trust Company, had been previously sold and that the

records of this Court so show?

A. I did not know that.

Q. But if the fact be that the records of this Court show that previous to 1911 the safe deposit vaults were sold and in the hands of independent persons, then the nomenclature here, safe deposit vaults, would not accurately apply to the Title Guarantee & Trust Company, would it?

A. If I make that assumption I presume I would have to follow that conclusion.

Q. That is what I mean. If that be correct. I am not trying to mislead you.

A. Yes.

Q. If the fact here is that this Court authorized its receiver prior to the year 1911 to sell its safe deposit vaults and these safe deposit vaults were in the hands of other people, then this nomenclature here under the head of character of business, safe deposit vaults, would not apply to that particular item on line 27, would it?

A. No.

Q. Now you said something about statements. Your theory is, and I understand you not to express any actual personal knowledge about it, that this Assessor makes up this roll and gets this forty thousand dollars from what you assume to be a precedent statement furnished to the Assessor by the person whose name is on this roll; is that correct?

A. That is correct.

Q. In other words, the theory of the law seems to be that the Assessor leaves with every property hold-

er a statement blank upon which he is to fill out his personal property subject to taxation.

A. Yes.

Q. And return that to the Assessor and upon that the Assessor enters his name and the valuation of that personal property; is that correct?

A. Yes.

Q. Now suppose that the property owner does not return that statement and don't make the statement, then what does the Assessor do?

A. The law provides, the statute provides that the Assessor regularly make an arbitrary assessment.

Q. An arbitrary assessment; and so far as Multnomah County and the City of Portland and the State are concerned, that Assessor acts at his peril, does he not, as to whether he gets the right person named on there, don't he?

The COURT: That is a question of law.

Mr. BRISTOL: I beg your Honor's pardon?

The COURT: I say that is a question of law.

Mr. BRISTOL: I think perhaps it is, but I want to see if any change—

Mr. EVANS (interrupting): I think the statute does not make any difference, Mr. Bristol.

Mr. BRISTOL: I think it makes this difference: What I am trying to arrive at is, if there is any method or management in the tax collector's office or the Assessor's office, that this witness knows about, that would change the application of that rule of law, I want to be advised of it.

Mr. EVANS: Have you a question in?

Mr. BRISTOL: Yes, I asked the question before, but I wanted the Court and counsel to understand why I ask it. Suppose he gets the name wrong, now what is the method of transaction of business by which they collect the county, state and municipal taxes with reference to that person.

Q. In the method of your transacting tax collecting business as applied to the specific property you intend to assess, suppose this forty thousand dollars was assessed there in the name of W. C. Bristol, would that be my tax?

A. It would be, in so far as the collection was concerned, unless we had advice from the former—

Q. Yes.

A. From the officer in whose custody the roll was.

Q. Yes. In other words, you don't claim for that assessment roll any virtue by reason of the way you transact business and render these statements, other than appears on that assessment roll itself, do you?

A. That is true.

Mr. BRISTOL: That is all.

Re-direct Examination.

By Mr. EVANS:

Q. Mr. Huckabay, if that had been assessed to Mr. Bristol and you undertook to collect from Mr. Bristol, is there any provision of law whereby when he makes known the fact that he does not own that property that you can correct the assessment roll?

A. Yes. That is, we are allowed to make a correction. There is a special statute providing for the

officer in charge of the tax roll to make the proper correction to conform to the facts.

Q. Yes; whenever the proper showing is made?

A. Yes.

The COURT: Suppose it should turn out that the Title Guarantee & Trust Company were possessed of no merchandise and stock in trade, do you think the Title Guarantee & Trust Company should apply to the Sheriff for a correction?

A. Yes, at that time.

Mr. BRISTOL: And suppose the Title Guarantee & Trust Company at that time was not doing business, had no actual entity in the sense of having a corporation or anything of the kind that was active through its officers, and was itself a dead thing, then what?

A. It is a point that is difficult for me to answer, because I haven't gone into it thoroughly. The fact of the matter is we have several cases pending.

Mr. BRISTOL: And this is rather a test case, isn't it?

Mr. EVANS: Your position is, the officer in charge would do his duty and make the showing to the Court?

WITNESS: Yes.

Mr. BRISTOL: That is a presumption of law all right enough but I am trying to get at the fact, what he would do if a certain particular thing would happen.

The COURT: Are you through with this witness?

Mr. BRISTOL: Yes, I am through.



The COURT: I want to inquire whether or not when the Assessor makes the assessment, the property holder not having made the return, whether or not he makes up a slip and files that?

A. He makes up the same sort of a statement, the same form that would be returned by the property holder and files it.

The COURT: Well, I understand you sent out, or the Assessor sent out to the property holder blank slips, blank forms?

A. Yes.

The COURT: And if the property holder makes his assessment, why that blank form is filled out and sent in?

A. Yes.

The COURT: But if he does not make the assessment, or if the property holder does not so return his assessment, does the Assessor take a slip of the same kind and make the assessment himself in that way?

A. He does; yes.

The COURT: Very well. And that slip is filed in the office?

A. It is filed with the others.

The COURT: Have you those slips?

Mr. EVANS: Why, I asked the Assessor this morning to bring them down, but he misunderstood me, thinking I wanted the last one of the assessment roll, and I have asked him now to get all of them, but I have only one here. They will all be here this afternoon. The Assessor will testify about that.

(Witness excused.)

G. R. FUNK was next produced as a witness on behalf of Petitioner, and having been first duly sworn, testified as follows.

Direct Examination.

By Mr. EVANS:

Q. Mr. Funk, what official position do you hold in the County of Multnomah?

A. Chief of the field work.

Q. In what office?

A. The County Assessor's office.

Q. How long have you been connected with the Assessor's office of Multnomah County?

A. About nine years.

Q. And you are familiar with the tax records of the office?

A. Yes, sir.

Q. Will you tell the Court the method of assessing personal property, please?

A. The method of assessing personal property, on the first day of March deputies are assigned certain territories and they take blanks similar to the one that the Judge has. They go to everybody in the county, taking the town or addition by blocks, pass to everybody and leave a blank statement with them to be filled out, at the same time taking their name and address. In two or three or four weeks afterwards the deputy retraces his steps and in the meantime whatever assessments have been sent in or whatever statements have been filled out he checks them off of his list each morning so that he will not duplicate or

go to anybody that has already sent in a statement and he retraces his steps and goes over and asks for statements from those who have not sent in their statements already. That is sometimes done as much as three times, or sometimes gone over at least three times, in order to get people to make the statements themselves. If after repeated demands to get statements from the people they fail, then to make a statement the Assessor makes an arbitrary statement of the property that they have, to the best information that he has at hand, whatever it is. Then just preceding the time of the Board of Equalization, at the time that he turns over the roll to the Board of Equalization he sends out written notices to each and every person who has failed to make a statement themselves. When they are made from the information that the Assessor has, or, in other words, as we call it, arbitrarily, we place an N in there to notify, and the date of notification is stamped on the blank, which in this case was October 14th, 1911. We notified them that they were assessed, what they were assessed for, the different items, and that the Board of Equalization met at a certain time; that if they were not properly assessed that they had a right to appear before the Board and make their objections.

The COURT: Does that notice give the items?

A. That notice gives the absolute items.

The COURT: That were assessed against the parties?

A. That were assessed against the parties.

Q. (Mr. Evans) Now for instance, that slip you

have there, let's identify that and get it in evidence. What is that slip you have there?

Mr. BRISTOL: Yes, I think it would be very wise.

A. This is an arbitrary notice of arbitrary assessment made. This is simply a memorandum. This is what the Assessor makes up the assessment roll from, as I understand it. This (indicating) is really the legal part of the proposition.

Mr. BRISTOL: What do you mean by this? You put your hand on this? The book?

A. The assessment roll is, really.

Mr. BRISTOL: The book?

A. The book.

Mr. BRISTOL: That is the legal part of the proposition?

A. As I understand it.

Mr. BRISTOL: Yes.

WITNESS: Now then, in order to make up a roll, either of personal or real, why there must be evidence gathered and put together to make up the roll. As an example, if we are making up a real roll we put the values of the ground on maps and from that place it into books. Now for the personal, we place it on a personal statement like this and from these they are written into books. They are inserted in alphabetical form, so far as the personal is concerned. After all of these statements are in they are placed in alphabetical order, and from that all of those in A, beginning with A, are written in the A book, and the same with B, and so forth, and T in the T book. So that this is the memorandum from which the roll is made.

Q. Now this slip of paper I hand you here, what is it?

A. That is a personal blank for 1911.

Q. Showing what?

A. The personal assessment of the Title Guarantee & Trust Company, R. S. Howard, Receiver.

Mr. BRISTOL: Made out by whom?

A. Made out by a deputy named Shipley.

Mr. BRISTOL: Not made out by Mr. Howard?

A. Not made out by him. It is an arbitrary assessment.

Mr. BRISTOL: An arbitrary assessment?

A. If it was made out by Mr. Howard I presume we would have no contention, because he would make it himself.

Mr. EVANS: The slip will be offered in evidence and I ask to have it marked Intervenor's Exhibit.

Mr. BRISTOL: Objected to, any more than it is a mere exemplar of the witness' testimony, and objected to on the ground it is not substantive evidence to prove any fact in the petition, and therefore incompetent.

Mr. EVANS: The purpose of it is it is offered in connection with the explanation made of the manner of making assessments.

The COURT: Objection overruled.

Thereupon said paper was marked,

#### INTERVENOR'S EXHIBIT 1.

Q. (Mr. Evans) Now refer to the tax roll for 1911, Mr. Funk, and to the item about which there has

been testimony concerning the assessment on line 27.

A. Yes, sir.

Q. And explain, if you can, what the term safety deposit meant on that line on the assessment roll.

A. That is simply an explanation of what was assessed.

Mr. BRISTOL: Of what was assessed?

A. Yes, sir. It is an explanation of what was assessed. The \$40,000 is assessed as a value placed on the safety deposit vault located at number 2 Chamber of Commerce. That is the value.

The COURT: You call that merchandise?

A. Yes, sir, call it merchandise.

Q. (Mr. Evans) And this petitioner's exhibit, the slip of arbitrary assessment, does that state what sort of business the concern was engaged in at that time?

A. Yes, sir; safety deposit vaults.

Q. There are no other items entered? Was there anything else on that?

A. Yes. There was fifteen hundred dollars for office furniture.

Q. Do you know where that was?

A. I presume at 240 Washington street, on account of the address here. We always give, if there is more than one address, make them put the two addresses on the statement, and 240 Washington street here is presumably where the office furniture was located, at 240 Washington street.

Q. That is the office of the old Title Guarantee & Trust Company?

A. Yes.



Q. Anything else you want to look at?

The COURT: Well, he has explained—maybe you are going to ask about it.

Mr. EVANS: No. I was going to take another roll.

The COURT: He has explained that the merchandise, stock in trade, means safety deposit vaults, and that appears on the roll of 1911.

Mr. EVANS: Yes.

The COURT: Now it does not appear on other rolls as to what that is. Here, for instance (indicating).

Mr. BRISTOL: Roll of 1910 the Court means.

The Court: Yes.

Mr. BRISTOL: Line 45.

WITNESS: Line 45 was not written in there. That was simply written in the 1911 roll as more explicit. That is all.

Mr. BRISTOL: You don't write the name "receiver" here either on line 45 in the 1910 roll.

The COURT: Just a moment. You can answer that question.

A. No, it is not written here.

Mr. EVANS: Can you tell from these rolls? Mr. Emmons suggests it is on the next page; that is Title & Trust Company.

WITNESS: No; that is a different concern entirely.

Q. Can you tell from the slips that you say are made preliminary to the items on the assessment roll what was included?

A. Yes, sir.

Q. Will you have those slips here this afternoon then?

A. I will try to get them. They are put away in boxes in the basement at the Court House. They become quite accumulated in the office and they put them away in boxes down in that basement and it is pretty hard to get at them.

Mr. EVANS: It is important, Mr. Funk, because some of this property has been sold by the Receiver, as Mr. Bristol has indicated, it will be very important.

Mr. BRISTOL: The records of the court so show. I will advise you of that now.

WITNESS: This is evidently made on the same basis. I know forty thousand on the vault and fifteen hundred on the furniture; just the same.

The COURT: Well, let me inquire what the time was when those vaults were sold.

Mr. BRISTOL: Your Honor, I will furnish you that date absolutely.

The COURT: It has been three or four years ago, hasn't it?

Mr. BRISTOL: It has been quite a while; yes, your Honor.

Mr. EVANS: Well, find that down there.

Q. Then in the 1909 roll?

A. The forty thousand dollars for the vault and the fifteen hundred dollars for the furniture, just the same.

Mr. BRISTOL: That is still safe deposit vault?

A. R. S. Howard.

Mr. BRISTOL: Now, Mr. Evans calls my attention to a question I asked of the previous witness on the stand. I notice this roll here is written up in one handwriting, and opposite line about 10 there is an asterisk, and the previous witness said that that indicated that it carried your attention to the foot of the roll and there we find, "Title Guarantee & Trust Co., R. S. Howard, Jr., Rec'r.", apparently entered in a different hand, perhaps in the same handwriting, I am not able to say, but it is different ink.

A. It is different handwriting, too.

Mr. BRISTOL: A different handwriting, too?

A. Yes, sir.

Mr. BRISTOL: Do you know anything about that?

A. Yes, sir.

Mr. BRISTOL: Can you tell me about it?

A. Yes, sir. Presumably, without any question, in sorting, if they happened to be sorted wrong—everybody makes mistakes, and we don't always get them in alphabetical order, and when we write them if they are in the wrong place, why then they are written at the bottom of the page where they should be in alphabetical order, and the asterisk is put there to call attention that here is the point where it should have been.

Mr. EVANS: That is, that item should have been entered up here?

A. In looking for Title Guarantee & Trust Company naturally he would look alphabetically for it and

naturally would find it here. When he does not find it here he sees the asterisk and looks at the bottom and finds there it is.

Mr. BRISTOL: The question was, when was that put in?

A. I could not tell you when it was put in. It was put in by the chief deputy at the Assessor's office at the time. It is in Maxwell's handwriting.

Mr. BRISTOL: That is what I thought.

Q. (Mr. Evans) But the point we are after is the difference in the handwriting between R. S. Howard, Receiver, and the other. That of R. S. Howard, Receiver, seems to be in a different handwriting than the entry Title Guarantee & Trust Company.

A. Yes.

Q. Do you know anything about when R. S. Howard, Receiver's name was put in there?

A. Sometime of course prior to the time it was turned over to the Board of Equalization.

Q. You don't know when that was?

A. I don't know the date.

Mr. BRISTOL: Whose writing is that? Do you know?

A. Maxwell's.

Mr. BRISTOL: That is Maxwell's writing?

A. Yes.

Mr. BRISTOL: Is that Maxwell's writing, too (indicating)?

A. Yes.

Mr. EVANS: Now Title Guarantee & Trust Company. That is not getting it in the record.

Mr. BRISTOL: Well, that is not Maxwell's writing (indicating), is it?

A. I don't think it is.

Mr. BRISTOL: No; but this is, the words "R. S. Howard, Jr." is Maxwell's writing?

A. Yes, sir.

Mr. BRISTOL: You don't know whose writing that is, do you, the words there, "Title Guarantee & Trust Co."?

A. No. I could tell by looking back over our records who wrote the book.

Mr. BRISTOL: Well, the point you are sure about, however, that was placed on there, it was placed on there as it now appears and at different times, and at any rate, that forty thousand relates to the safe deposit vaults and nothing else?

A. However, the same man that wrote this wrote this (indicating), the address.

Mr. BRISTOL: You say the same man that wrote what,—R. S. Howard, Jr., Receiver?

A. Wrote this (indicating).

Mr. BRISTOL: Wouldn't you say that the same man that wrote "Second and Washington Street" wrote "Title Guarantee & Trust Co."?

A. No.

Mr. BRISTOL: But the man who wrote R. S. Howard, Jr., Receiver, is a different writer than the fellow who wrote Second and Washington Street?

A. I don't think so.

Mr. BRISTOL: Don't you think, Mr. Funk, these particular items, line 46, page 6708 of the 1909 roll,

visibly shows that the Title Guarantee & Trust Co., Second and Washington, are written by the same person, but that the phrase in between "R. S. Howard, Jr., Receiver," is written by somebody different?

A. No, I don't think so.

Mr. BRISTOL: Well, look at the figures and see if you can tell.

A. Well, the figures are put in by the same one that wrote this and that (indicating).

The COURT: That is R. S. Howard?

A. And the reason how that can be, I can tell you just how that is; that sometimes some of the bigger concerns in the city, and sometimes not some of the larger ones but as a rule the larger ones in the city are being investigated by the Assessor himself in regard to their value, and there is simply what we call a dummy placed in the proper place, with simply the name of the concern on them.

Mr. EVANS: Oh, yes; so as to hold its position?

A. So as to hold its position; and then afterwards the address and the amount is filled out when the property, when it is properly turned over by the Assessor to be filled in.

Q. But the point we are making here, it seems to me all of us are somewhat of the impression, except you, Mr. Funk, that the Title Guarantee & Trust Co., Second and Washington, and the figures all look more alike there in the same handwriting.

A. No. The figures are Mack's figures.

Q. They are?

A. Yes.



Q. You are familiar with them?

A. All you have to do is look at your fours and fives all the way up and down the page to find it is not the same.

Mr. BRISTOL: Well, what I want to get at, Mr. Funk, is, you testify now R. S. Howard, Jr., Receiver, is entered in Maxwell's handwriting; is that correct?

A. That is my judgment, it is Maxwell's handwriting. I believe it is.

Mr. BRISTOL: And Maxwell was who?

A. He was the chief deputy in the Assessor's office.

Mr. BRISTOL: Where is he now?

A. He is in the city.

Mr. BRISTOL: Is he still connected with the Assessor's office?

A. He is not.

Mr. EVANS: Do you know where he is working?

A. No, I don't.

Mr. EVANS: Then in the 1908 roll, I believe you examined at line 16. I will ask you to examine that roll and state if you can what items went to make up the roll under the heading of Merchandise and Stock in Trade.

A. Well, of course the deposit vault was included in it, and notes and accounts and other stuff, other merchandise was included into this.

Mr. BRISTOL: How do you know that? Why do you say "of course"?

A. From the value.

Mr. BRISTOL: What?

A. From the value of it.

Mr. BRISTOL: I know, but you are just making a speculation, Mr. Funk, from what you see there, and based upon the method and manner of doing business. Now, it is a very important matter for us to know.

A. I think we will have it here this afternoon.

Mr. BRISTOL: How is this sixty-two thousand made up? Well, is that an arbitrary assessment?

A. Well, I could not tell you from this book whether it is or not.

Mr. BRISTOL: What can you tell from?

A. I can tell from the slips.

Mr. BRISTOL: From the slips?

A. Yes. I think it is an arbitrary assessment, because there is a letter here I think that will show conclusively it was an arbitrary assessment.

Mr. BRISTOL: Yes. I think I know about the letter. You have got the rest of them, have you?

Mr. EVANS: I don't know whether there are any more or not. Were you able to find any more?

WITNESS: I don't know whether there are any more. There might be more, but we were unable to find them.

Mr. BRISTOL: Let's see if we can get this settled so we can expedite the matters. You can find the slips. Can't it be stipulated between us on every occasion when the Receiver was notified by the Assessor, that the Receiver always claimed the property exempt for causes and reasons therein set forth, and that you have a letter of July 13th, 1908, which would seem to be a reply to the Receiver, saying that the

Assessor would not allow his exemption claim, so we can get the whole thing in? Because, as a matter of fact, the Receiver did do that all the time; and it will save digging up a whole lot of records and it will save one point, which is, you have claimed that they made the arbitrary assessment and notified them. Now that notice would apparently be of some value. I want to show, which would be a part of our case naturally that that letter on its face shows, and that you all the time were notified, I mean your Assessor, so far as we are concerned we were claiming, as we claim now, this stuff so assessed was not assessible in the manner and method you assessed it and the property in the hands of the Receiver was exempt. You know that to be the course of the correspondence, don't you?

WITNESS: I believe that is the truth.

Mr. BRISTOL: Yes.

Mr. EVANS: This letter here indicates that Mr. Howard had previously—this is the copy from your office record, is it?

WITNESS: Yes, sir.

Mr. EVANS: Had previously taken the matter up with your office some way or other, either by correspondence or letter—

WITNESS: (interrupting) Either by phone or by letter.

Mr. EVANS: (continuing) And of course I suppose he would not waive his contention as to that.

Mr. BRISTOL: No, he didn't. I will tell you, furthermore, I will give you this assurance, the Court

and counsel: I advised with Mr. Howard all the time and I think his evidence will show, when I produce it, that he will advise the Court and counsel that he followed his counsel's advice.

Mr. EMMONS: Then it will be stipulated that he knew every year that they were attempting, or were assessing his property?

Mr. BRISTOL: He knew every year that they attempted to make these particular assessments in this particular way, and he was constantly claiming that the property was exempt.

Mr. EMMONS: That is what I understand.

Mr. BRISTOL: Yes.

Mr. EMMONS: He knew they were attempting to assess the property in the manner that they have assessed it.

Mr. BRISTOL: In the manner it shows on the rolls, but the Receiver was continuously objecting that that was not an assessment and that he was exempt therefrom.

Mr. EVANS: I will ask to have the letter copy of June 3rd, 1908, R. S. Howard, Title Guarantee & Trust Company—is that a copy from your office files?

WITNESS: Yes, sir.

Mr. EVANS: I will ask Mr. Howard if he can find the other.

Mr. BRISTOL: I think perhaps we can, but we admit we got it. I am not making any contention about that.

Mr. EVANS: I ask to have it copied in the record.

Mr. BRISTOL: Sure. And it will be understood

between us there are other letters, as Mr. Funk has testified, both pro and con, from the Assessor to the Receiver, and from the Receiver back, with reference to the same contention.

Thereupon by agreement said letter was received and set out herein as follows:

“B. D. SIGLER, ASSESSOR,

Multnomah County, Portland, Oregon.

July 13, 1908.

Mr. R. S. Howard, Receiver,

Title Guarantee & Trust Co., City.

Dear Sir:

I am unable to find any law wherein the personal property of the Title Guarantee & Trust Company, in your hands, as Receiver, March 1st, 1908, is exempt, since the law reads: ‘All real property within the State and personal property situated or owned within this state, except such as may be specifically exempt by law, shall be subject to assessment and taxation in equal and ratable proportion.’

“Since there is no provision exempting property in the hands of a receiver or any court, there can be no question about the property mentioned being subject to taxation, and I herewith enclose you blank, which please fill out and return to me at your earliest convenience.

Yours very truly,

.....  
Assessor.”

The COURT: There was no contention ever made that the Receiver ever had no such property as is mentioned in the tax rolls?

WITNESS: No, sir, not to my knowledge.

The COURT: I think the Court will take an adjournment now until two o'clock.

Mr. BRISTOL: May it please the Court, before your Honor retires, I might save Mr. Evans some trouble. I am willing to concede this much, if he wishes me to, and to save the hunting in that basement Mr. Funk spoke about. I am willing to concede to you that the Assessor attempted to make arbitrary assessments after receiving notice that this particular property was not bound, and that the result of those assessments appears to be as shown upon the rolls that you have introduced, without conceding that the name R. S. Howard, Jr., Receiver, as written in there was properly written in. You see what I mean? But I don't want you to go hunting up all those files.

Mr. EVANS: I think we ought to have them, because they may help explain what made up those items. If they can find them I prefer them to do it.

Mr. BRISTOL: Well, that is for your own convenience.

Thereupon, a recess was taken until two o'clock p. m. of this day, Wednesday, November 26th, 1913, at which time court reconvened and the trial herein was resumed as follows:

G. R. FUNK resumed the witness stand and further testified as follows:



Direct Examination (continued).

By Mr. EVANS:

Q. We asked you to make a search for the records to see if you could find the other statement of assessable property.

A. Yes, sir.

Q. Did you succeed in finding any others?

A. I found one more.

Q. For what year was that?

A. 1910.

Q. This is it you produce here, is it?

A. Yes, sir.

Q. That covers the assessment that was made in 1910?

A. 1910, yes, sir.

Mr. EVANS: I will offer it in evidence.

Thereupon, said paper was received in evidence without objection and marked,

INTERVENOR'S EXHIBIT 2.

The COURT: Do you keep all of these slips on file?

A. Well, they get to be pretty bulky and they are put in boxes and put in the basement of the Court House and the janitors pile stuff around over them and they are pretty dirty, and we had to go through a great big lot of junk to get these.

Q. (Mr. Evans) Are they still looking for the others up there?

A. No. They quit.

Q. They could not find them?

A. Well, they are there, but then just where. They are not really the record anyway, as far as that is concerned. They are simply what the record is made from.

Q. Explain please what that double "A" means opposite those items that have been entered there, the amount of the assessment.

A. Well, the double "A" means it is arbitrary assessment and written in red means that it was taken off the statement the year before; that it was arbitrarily made the year before and that is the amount it was assessed at the year before, in 1909, forty thousand dollars for the safety deposit vaults, written in red too, and fifteen hundred dollars for the furniture.

Q. So virtually then this exhibits the assessment for 1909 as well?

A. It does, yes.

Q. In the 1908 assessment roll it appears, as I recall it, the first item was some sixty-five thousand dollars.

A. Some, and I don't remember how many.

The COURT: Sixty-two thousand.

Mr. BRISTOL: Sixty-two thousand five hundred.

Mr. EVANS: Sixty-two thousand five hundred dollars besides the personal property; besides the fixtures, I should say.

Q. Do you know whether or not the safety deposit boxes were assessed?

A. Yes, sir.

Q. In that item?

A. They were included in the assessment.

Q. And what else, if you know, went to make up

that value of the property?

A. In 1908 the assessment included also the plant; that is the books.

Q. What plant did they have there?

A. Well, they had a set of books for searching titles. They had a plant there for an abstract plant.

Q. You mean an abstract plant?

A. Yes, sir. They sold it in some place about August 1st, 1908, to the Title & Trust Company, which has it now. They went in business on the 1st day of August, 1908, and it was about that time, I don't know for sure, I didn't get time to look up the bill of sale, but that is the time that they went into business, on the 1st of August, 1908, and they purchased this plant.

The COURT: Who purchased this plant?

A. The Title & Trust Company. It is now in the Lewis Building. They are another abstract company and guarantee company.

The COURT: They purchased it from the Title Guarantee & Trust Company?

A. Presumably from Mr. Howard, but it was the plant that the Title Guarantee & Trust Company had.

Mr. EVANS: You mean they bought over their abstract books and outfit for making abstracts?

A. Yes, sir.

Mr. EVANS: Bought that from the Title Guarantee & Trust Company. Do you think of anything else, Mr. Emmons?

Mr. EMMONS: I think that is all.

## Cross Examination.

By Mr. BRISTOL:

Q. Did you find out, and refresh your memory about that R. S. Howard, Jr., Receiver business?

A. No, I didn't look any further in regard to it, Mr. Bristol.

Q. I will call your attention to Intervenor's Exhibit 2 and ask you if I understood you correctly that this red shows that the same sort of an arbitrary assessment would be made to the Title Company for 1909?

A. Exactly.

Q. Exactly. So that if you had that statement here it would be just the same as that one?

A. It would be absolutely the same. The red is put on there for the benefit of the assessor in making comparisons each year.

Q. I am particularly anxious to know whether the name of the receiver would be upon that assessment or that statement at all?

A. Well, that I could not tell you.

Q. Well, it is not on that one, is it?

A. No. That I could not tell you. But the amounts here are taken, these amounts here are taken from the previous.

Q. Yes, I understand that; the previous roll?

A. Yes. But in regard to the name, why, I could not tell you.

Q. Well now, this roll says, "Title Guarantee & Trust Co.," don't it?

A. Yes.

Q. "Character of business, banking"?

A. That is the item, the statement there, although the roll might include even more than that.

Q. All right; let's look at it. 6782, line 45, would represent the roll for 1910, wouldn't it?

A. Yes, sir.

Q. That is on Intervenor's Exhibit 2 and is the entry that shows that this statement was entered?

A. Yes, sir, that is it exactly.

Q. I notice on here in blue pencil, "See Maxwell before entering." What does that mean?

A. Well, evidently Mr. Maxwell asked something in regard to it. Maybe he wrote it himself. I don't know whether he did or not.

Q. Why was it that Maxwell was always the fellow that was particularly concerned here about this Title Guarantee & Trust Company tax apparently?

A. Well, that I don't know, otherwise than that he was chief deputy in the office. Otherwise I could not tell you.

Q. Now, I show you the 1909 roll at the point and place where line 46 appears, and ask you by what authority anybody would have to enter the name of the Receiver, in view of the fact that you told us this morning on your direct testimony that these entries here were made up from statements previously prepared and that this statement, Intervenor's Exhibit 2, which you say is a proper one, does not show the name R. S. Howard, Jr., Receiver?

A. Well, that would not be any reason why that they could not be added to it, because it is not a tax

roll, Mr. Bristol.

Q. Well, but I am getting at the fact that you stated—

A. (interrupting) It could not be—

Q. (interrupting) Now, wait a minute. Did I understand you correctly that the foundation for the roll itself is either a previous blank or a previous statement either actually made by the owner or arbitrarily made by the Assessor?

A. Yes, sir.

Q. Is that true?

A. That is true.

Q. Now then, it is also true, isn't it, that Intervenor's Exhibit 2, you told us was the same by reason of these red letters that you identify it by, was the same for 1909 as it was for 1910?

A. Yes, sir. These items—

Q. (interrupting) Now then, these—

Mr. EVANS: (interrupting) Wait until he gets his answer finished.

Mr. BRISTOL: All right. Go ahead.

WITNESS: These items are absolutely the same. (Indicating.) These may not be the same, because if this had changed hands and was under a different name, why, these items would appear, as this was assessment on the particular property.

Mr. EVANS: "This" and "these" don't get in the record.

Q. (Mr. Bristol) So you did have some information then with regard to the future whether the institution changed hands, did you?



A. Oh, sure.

Q. Now, as a matter of fact, it had changed hands prior to 1909, hadn't it?

A. Yes; part of it was changed hands anyway, before that.

Q. No, but I am getting at the actual physical situation as to the Title Guarantee & Trust Company. Did not you as one of the Assessor's deputies, know that the Title Guarantee & Trust Company went into the hands of this court on November 2nd, 1907?

A. There is no doubt but what the Assessor knew it.

Q. Yes; all the time?

A. There is not any argument about that.

Q. Well, I don't know whether there is or not. What is the fact? You people representing Multnomah County knew that, didn't you? It was published in the papers and everywhere else?

A. There is no doubt about it.

Q. No. Now, what I think is particular material to us is that if the Receiver on the one hand was constantly contending, or making it appear, that there was no liability, and the Assessor was making it appear that there was a liability, and that arbitrary assessments were made in this way all the time to get a foundation for the rolls, how it came about that when we got the arbitrary assessment statement produced, the Receiver's name is not on it, if there was an intention to assess the Receiver.

A. That does not make any difference, because this is not a roll.

Q. Which is not a roll?

A. This not the roll until after it is accepted as a roll. You see, this is simply the foundation of the tax roll. At the time that the Assessor makes this up, now—

Q. (interrupting) What you are referring to as “this,” is book 6708 of 1909 tax?

A. Yes; any book, as far as that is concerned, that is included in the roll. I am making a general statement that so far as the Assessor was concerned, if the day before he turned this over to the Board of Equalization he had got information that these safety deposit vaults were only worth five hundred dollars he had a perfect right to change this to five hundred dollars. That is not violating any part of the law. And if he found R. S. Howard, Jr., was an owner of a part of it the day before he turned it over, he had a right to add R. S. Howard, Jr.'s name so long as he notifies him.

Q. So long as he notifies him?

A. Yes.

Q. Have you got any proof that he ever notified him?

A. Yes.

Q. What?

A. The record shows, you know, the date of the notification, and that is the only person that he could notify.

Q. Where is the record of notification in 1909 that you notified the Receiver?

A. We haven't got it here.

Q. You haven't got it here. Did you notify the Receiver?

A. I always do.

Q. Not the Title Guarantee & Trust Company, but the Receiver.

A. Always do, because the Assessor knew—there is no doubt but what he knew the Title Guarantee & Trust Company was in the hands of a Receiver and that R. S. Howard, Jr., was the Receiver.

Q. Now, Mr. Funk, just a minute. I don't want you to make a statement that might be incorrect.

A. I don't want to, either.

Q. I know, but listen. Now let me remind you: You remember that George H. Hill was the first receiver in this court, don't you, and that he was removed?

A. Yes, I remember he was, yes.

Q. And you remember that next to George H. Hill came Edward C. Mears, who would be the receiver in the year that this assessment was made, 1909.

A. Well then, probably Mr. Mears is the man that—

Q. (interrupting) Well then, how does it come that R. S. Howard's name is put there? That is just what I want to know.

A. Well, if Mr. Mears was the Receiver at the time that this roll was turned over to the Board of Equalization, I haven't any explanation.

Q. Yes. Well now, the roll for 1909 taxes—let's get it right now—the roll for 1909 taxes would be in the Board of Equalization in October of 1908, would-

n't it?

A. Yes, October of 1908.

Q. Wouldn't it?

A. No; October of 1909.

Q. Not the 1909 roll; that would be the ten roll.

A. The 1909 roll is 1909.

Q. The 1909 roll is 1909?

A. Yes.

Q. In other words, then, if that be the case, there is twelve months yet in our favor that I didn't know about. The roll for this year of 1913, for instance, we went before the Board as taxpayers in October, 1913?

A. That is correct.

Q. Now, that roll you don't collect on until after the 1st of March, 1914?

A. Yes.

Q. Is that right?

A. The 1st of February.

Q. The 1st of February, yes. Now then, this 1909 roll then would not be subject to collection upon it until the following 1st of February, 1910?

A. That is correct.

Q. All right. Then let's put it this way: Can you tell me whether or not that name, R. S. Howard, Jr., Receiver, was put on there previous to the time that the Board of Equalization acted?

A. It must have been, because the Assessor does not have charge,—did not have charge of the rolls at any time after that.

Q. Well, that is not the point. That is only argumentative. Do you know what the fact is?

The COURT: Do you have any personal knowledge of that?

A. I don't know when it was put on personally, only I know that the Assessor up until this year—the law was changed this year—up until this year the Assessor did not have,—after he turned the rolls over, which will show in the back of the book the time they receipted for them, that the Assessor at no time had the rolls in his possession. Here is where his affidavit is, where he turns it over (indicating). Here is where Fields receives it (indicating).

Mr. EVANS: October 18.

Mr. BRISTOL: No; that is where it went to the Board of Equalization?

WITNESS: Exactly.

Q. It went to the Board of Equalization October 18th, 1909?

A. Well, the Assessor at no time had this book after that time. It was in the possession of either the Board of Equalization or the County Clerk or of the Tax Collector.

Q. Yes. Well now then, in view of the fact that this statement—I will put it this way to you, because I want you to give the Court the benefit of your expert knowledge on this; in view of the fact that this statement says "Title Guarantee & Trust Co. for the year 1910, "Intervenor's Exhibit 2, and that by contemporaneous facts you state that 1909 would be the same, and the fact that all of these rolls produced here except two of them, only use the name Title Guarantee & Trust Company alone, even during the time of

the receivership, please be kind enough to tell me, was it the intention of Multnomah County, so far as you know, to assess the Title Guarantee & Trust Company for what it claimed to be a personal tax, or was it its intention to assess the Receiver?

A. Well, my opinion is, that is all I can tell you—

Q. (interrupting) I didn't ask you your opinion; I want the facts, Mr. Funk. You know what I mean as to what the intention was when they put "Title Guarantee & Trust Company" on there; was it the intention to assess the Receiver or the Title Guarantee & Trust Company?

A. Well, Mr. Bristol, I wasn't the Assessor.

Q. I know, but you know the surrounding facts.

A. And what Mr. Sigler's intention was, why, it would be hard for me to swear to.

Q. Well then, I will put it around the other way. You were the chief field deputy, were you not?

A. No, not at that time.

Q. Well, you were in the Assessor's office?

A. Yes, sir.

Q. I will put it this way—

A. (interrupting) I had charge of the land values at that time.

Q. In view of your charge of the Assessor's office, if you were assessing R. S. Howard, Jr., Receiver of The Title Guarantee & Trust Company, that is the name you would put in the roll, isn't it?

A. I would, yes.

Q. And if you were assessing the Title Guarantee & Trust Company, that is the name you would put in



the roll, wouldn't you?

A. I might make a note, of course, indicating that they were bound together, just the same as—

'Q. (interrupting) Well, that is not the point I am getting at. I want to know with reference to that intention. So I think you have explained exactly what I am after. Now, how do you explain that part of the time in those rolls of 1908, 1909, 1910 and 1911, in the four instances two of them don't mention the Receiver's name at all and only one of them mentions the Receiver as an addition after the roll is apparently made up?

A. I told you that I didn't explain it, because I don't know why they didn't do that.

Re-direct Examination.

By Mr. Evans:

Q. So far as the Assessor's office was concerned, your understanding about it, it would not have made any difference whether this property was in the hands of a receiver or was still in the Title Guarantee & Trust Company's hands? What you were trying to do was to assess the property that belonged to the Title Guarantee & Trust Company?

Mr. BRISTOL: Now, I object to that upon the ground that, and I think counsel recognizes it to be more or less argumentative, involving part of the determination that this Court would have to make, and rather calling for the conclusion of the witness.

Mr. EVANS: It is probably objectionable for that reason, but I imagine there have been one or two more

questions somewhat argumentative ahead of it.

The COURT: You may answer the question.

Mr. BRISTOL: I think on cross examination I had a right to pursue it.

The COURT: You may answer the question. The Court will give it such weight as it deems proper.

A. Well, individually the Assessor's office, as I understand it, was to assess the property, all personal property that is located in the County of Multnomah, it is the duty of the Assessor of this county to assess, and if it was the Title Guarantee & Trust Company's property, why, it presumed that it was, and as I understand the law, if he made a mistake in assessing it, it is not conclusive that it should not be assessed; that the law provides for that, and that it does not make any difference whether it was assessed to the proper owner or not. To explain the way I understand it is this: If I find goods down here in a store stored away, the law recognizes that the Assessor has a perfect right to assess that property to the man who has the goods stored, without the man will make a statement himself stating who owns the goods and the value of them.

(Witness excused.)

Mr. EVANS: Mr. Howard, please take the stand.

R. S. HOWARD, Jr., was thereupon produced as a witness on behalf of the petitioner, and, having been first duly sworn, testified as follows:—

Direct Examination.

By Mr. EMMONS:

Q. Mr. Howard, you are Receiver of the Title

Guarantee & Trust Company?

A. I am.

Q. And how long have you been such Receiver?

A. Since January 21st, 1908.

Q. Did you ever have any notice from the Assessor's office that the property which you hold as Receiver was being assessed, the personal property?

A. I did.

Q. When did you first receive that notice?

A. My recollection was sometime in 1908; I mean during that year.

Q. And each year subsequent to that time did you have notice?

A. I can't recall as to a direct notice, but I can recall them leaving blank statements there, as they are accustomed to doing from house to house, or from place to place. That is the custom of the office.

Q. Each year?

A. Each year.

Q. And have you talked to the Assessor, Mr. Sigler, in reference to these taxes?

A. I did not talk to Mr. Sigler. I had conversations—I first advised with my attorney on the first assessment, with Mr. Linthicum and Mr. Bristol.

The COURT: That is 1908?

A. 1908, yes, sir; and then each recurring instance I took it up with my counsel and was under advice from them, and then I several times spoke to Mr. Maxwell, who was the chief deputy in Mr. Sigler's office, the county Assessor.

Q. Now, you paid the taxes, I believe, on the real

estate that you held as Receiver?

A. Each year, yes.

Q. Did you ever pay it on the personal property that you held as Receiver?

A. I can't recall that I did.

Q. In fact, you contended that the property was not assessable—

A. (interrupting) The personal.

Q. (continued) while it was in the custody of the Court?

A. And under the advice of counsel I acted.

Q. Under the advice of counsel?

A. Yes.

Q. Then the taxes on the personal property which you hold have never been paid, on the personal property?

A. It has not been paid.

Q. Now, what was the character of this personal property that you had on which the taxes have never been paid?

A. You mean on which the assessment was levied?

Q. The personal property that you held as receiver.

A. I don't know what they were assessing, but it was presumably on notes and open accounts and the assets of the Title Guarantee & Trust Company.

Q. Well, you had some safety deposit vaults?

A. And that is one of its assets, or was.

Q. Yes; and you have never paid any taxes on the vaults, have you?

A. No.

Q. Were you operating those vaults while you were receiver?

A. I was, yes, under the orders of this court.

Q. And for how long did you continue to operate them?

A. I sold them in August, 1911.

Q. And you had some furniture, fixtures, and so forth?

A. Office fixtures, yes; regular banking fixtures, desks and usual paraphernalia.

Q. Do you know what valuation they placed on these vaults?

A. Not in detail, no.

Q. Forty thousand dollars?

A. I don't know anything of the total assessment.

Q. I know, but would forty thousand dollars be an unreasonable amount to assess?

A. I don't know the basis on which they would assess such a holding.

Q. You don't make any contention, as I understand it, as to the amount of the assessment, but simply that they had no rights, under the advice of counsel, to assess them?

A. I have never replied to it, or investigated any further than to go into it with my counsel, and there I stopped.

Q. Did you know on what valuation this property was assessed during these years?

A. Not in detail, no, I did not.

Q. You knew in a general way?

A. Because the notices or the statements would

only carry an assessing amount, a total amount. I didn't know how it was segregated.

Q. You received these statements from the Assessor each year showing the amount the property was assessed at?

A. Well, not from the Assessor. I don't recall. I may have an instance in mind where I had such a notice from the Assessor's office, but I more particularly had notices from the Sheriff's office sending out these delinquent notices.

Q. Did you ever make any objection to the valuation on this property on which assessment was made?

Mr. BRISTOL: It is entirely immaterial, your Honor. It is not within the issues in this case.

The COURT: He may answer the question. I think these matters would probably come up hereafter, and you had better have all the testimony in.

WITNESS: What is the question?

The COURT: Did you ever object to the valuation of the property?

A. Not in detail, no. My objection was on assessment. I never went into detail.

Q. On the question of liability at all, whether the property was assessable?

A. Yes.

Q. That was the ground of your objection?

A. That was the ground of my objection.

Cross Examination.

By Mr. BRISTOL:

Q. Did you ever receive any notice from the Sher-



iff that he held a warrant for the delinquent personal property taxes and would levy upon property in your hands?

A. I did not.

Q. At any time?

A. At no time.

Q. Were you ever notified by T. M. Word, the tax collector, by R. L. Stevens, the Sheriff of Multnomah County, or by B. D. Sigler, the Board of Equalization, or any official body or official, that the property in your hands was subjected to probably levy under a warrant in the hands of the tax collector or the officers acting for him, and as such receiver you would be held liable therefor?

A. I was not.

Q. I show you four papers, which are exhibits attached to the decision of the District Attorney in this proceeding, and ask you if you ever saw them before.

A. These particular papers?

Q. Well, or any ones like them?

A. I have had documents, I have had similar sheets from Mr. Stevens' office when he was Sheriff and Tax Collector.

Q. Well, what do you mean by "similar"? Did they contain the same subject matter and the same name?

A. As near as I can—

Q. (interrupting) All right. I call your attention to the four sheets handed to you, purporting to be delinquent tax statements for the years 1908, 1909, 1910 and 1911, and ask you to look at them and tell

me whether they compared with what you saw before and whether the name of R. S. Howard, Jr., Receiver, or any demand on R. S. Howard as Receiver, was ever made for those taxes.

A. They were mailed; they were generally mailed to the Title Guarantee and Trust Company.

Q. Well, I call your attention to the fact that the papers in your possession are all Title Guarantee & Trust Company, are they not?

A. Each of these is so written.

Q. Do you see any R. S. Howard, Jr., Receiver, written there?

A. Not on these sheets.

Q. Now, what does the item in there, personal tax, refer to, do you know?

A. I do not.

Q. Were you ever told or advised?

A. I may have had a notice from the Assessor's office. I think I did.

Q. What kind of notice do you mean by "notice"?

A. A notice of the proposed assessment, the regular form they send out sometimes.

Q. Well, you mean like these in here that Mr. Funk has testified about? Is that what you got?

A. No, not these. It was just a form, the regular printed form that you have been assessed so and so.

Q. You had been assessed so and so?

A. Yes; the Title Guarantee & Trust Company.

Q. Well, was that addressed to the Receiver? The point I want to get at, Mr. Howard, now Mr. Emmons has asked a lot of general questions here that are sus-

ceptible of a certain intendment; I want to find out how far your notice went. Were you ever notified by the Assessor that the property in the Receiver's hands subject to any arbitrary assessment, was ever made at all? If so, when? I am not talking about the Title Guarantee & Trust Company; I am asking you about the Receiver, R. S. Howard.

A. I recall no instance in which I was notified as Receiver.

Q. No; you bet. Now, were you ever notified, except insofar as it may be claimed and asserted that the roll itself was notice, were you ever notified at any time, for instance in the year 1908, that merchandise and stock in trade in your hands was assessed to forty thousand dollars?

A. I was not.

Q. Were you ever notified in any year, as Receiver, that merchandise and stock in trade in your hands as an officer of this court was assessed to you, and that an obligation arose from you, as Receiver of Multnomah county thereby?

A. I was not.

Q. Was any demand ever made upon you by any of the officers of Multnomah County prior to the filing of the petitions by Mr. Emmons and Mr. Evans for any penalties or interest of any kind in connection with this matter?

A. No, excepting through these mailed notices, these delinquent notices.

Q. Well, were they to the Receiver or to the Title Guarantee & Trust Company?

A. No, not to the Receiver; no. They were to the Title Guarantee & Trust Company; not to me as Receiver.

Q. Outside of the letters you were told either by myself or Linthicum, were you not, to write to the Assessor each year and call his attention to the fact that the Federal Court was in possession of this property and that this was a winding up and liquidating suit, that the Receiver claimed that they would have to look to the Court for that assessment and the stuff in his hands was exempt?

A. I was.

Q. Did you write such letters?

A. I wrote such letters.

Q. Now, you received replies from the Assessor, such as the ones Mr. Evans had here that we stipulated about, whereby the Assessor came back and said he would not allow that exemption, but according to law all personal property was assessable? Do you recall that personal correspondence?

A. Yes.

Q. Now that is one, July 13th, addressed to R. S. Howard, Receiver, Title Guarantee & Trust Company, and it reads: "I am unable to find any law wherein the personal property of the Title Guarantee & Trust Company is exempt." Now there were a number of exchanges of letters of that kind, this one relating particularly to 1908; and refreshing your recollection in that regard, did you act in conformity with the advice of counsel and so notify the Assessor or the Tax Collector, as the case might be?

Mr. EVANS: May I interrupt just a minute? How much trouble would it be, Mr. Howard, to get those letters? Your correspondence is not very extensive?

WITNESS: Well, I commenced a search during this lunch hour, and they were still getting them out. It runs over a period of large files, you know, and they were getting them together.

Mr. EVANS: The reason I ask, I have asked the Assessor to look for all the letters up there and they haven't been able to find any letters, and Mr. Funk told me the impression he had was likely this business was transacted orally between yourself and the Assessor.

WITNESS: Oh, no.

Mr. BRISTOL: No; I know that personally.

Mr. EVANS: If you have some letters I would like to see them.

WITNESS: The letters passed, and I also spoke several times to Mr. Maxwell, met him on the street, and at one time Mr. Stevens came up and was talking to me on the street about it.

Mr. EVANS: You can get those letters, can you?

WITNESS: Why yes. They probably have them out by this time. You can phone Main 5649 and ask for Mr. Macy.

Q. I show you a letter addressed to me under date of the 25th day of January, 1912, prior to the filing of any of these petitions in here, and ask you to look at it and with your memory refreshed therefrom advise the Court what the facts are with reference to the course you took and what you did as Receiver.

Mr. BRISTOL: I admit to counsel and also to the Court, that the letter itself is not competent. I merely want him to refresh his recollection. I am not purposing to offer it later.

The COURT: Is that a letter written to you?

Mr. BRISTOL: As his counsel, with reference to this matter.

A. Yes, I remember that letter.

Mr. BRISTOL: I am not going to offer it. It just recites the fact that he is testifying to. (Counsel passed said paper to Mr. Emmons.)

'Q. Now your request was that I write to Mr. Stevens, in that letter, and advise him of the contentions that we were making, when he was then Sheriff of Multnomah County, was it not?

A. It was.

Q. And you may state whether or not you received a copy of my letter to Mr. Stevens and in order to expedite matters I show you what purports to be a copy of my letter addressed to Robert L. Stevens, Sheriff of Multnomah County, prior to the time these petitions were filed, and ask you if you recognize it.

Mr. BRISTOL: And in that connection I will ask counsel if they can produce the original of that letter of January 26, 1912.

The COURT: Mr. Bristol, may I see that letter you showed to the witness?

Mr. BRISTOL: Most assuredly, your Honor. I beg your Honor's pardon. I didn't intend to offer it. It was simply to refresh his recollection. But your Honor has a right to see it, of course. (Counsel here



passed said letter to the Court.)

The COURT: Yes, I understand.

A. Yes, sir; I remember that. You sent me a copy of it.

Mr. BRISTOL: Yes. Now counsel for the Sheriff, or for the County, has what purports to be a copy of this same letter, your Honor. Now as illustrative of the matter at issue and the Receiver's attitude thereon, I offer in evidence the notice to Robert L. Stevens, Sheriff of Multnomah County, prior to the filing of these petitions herein, concerning this very matter, and ask to have it marked Receiver's Exhibit No. 1.

Thereupon said paper was marked Receiver's Exhibit No. 1.

Q. Now with reference to this matter, some time along about the 24th of January, then, as I understand it, some deputy of the Sheriff's office called upon you with reference to these delinquent, or alleged delinquent personal property taxes?

A. That was 1912.

Q. Yes; I say 1912?

A. Yes, sir.

Q. Before the filing of these petitions?

A. Yes.

Q. Then some talk ensued, and you told this deputy what you have said here, that the property was in the control of the Court?

A. In the control of the Court.

Q. And then he asked you to have a letter written to Mr. Stevens?

A. Yes.

Q. And this is the letter that you asked me to write and that you say you had a copy of, is it, Receiver's Exhibit 1?

A. Yes, sir.

Mr. BRISTOL: Now having offered that in evidence, I will read it into the record. (Reading.) "In re Title Guarantee & Trust Co."—

The COURT (interrupting): Mr. Bristol, that notice from the Sheriff, will you let me see that?

Mr. BRISTOL: Notice from the Sheriff?

The COURT: You offered one, I understood?

Mr. BRISTOL: No; that is this letter here. I didn't offer it. I just asked him to refresh his recollection.

The COURT: I have read that, but I thought you just now offered a notice from the Sheriff.

Mr. BRISTOL: No, no. I never had such notice. I never had such notice. This notice was by word of mouth, given by the deputy, as I understand it, saying, as there was some agitation Sheriff Stevens would like to be placed in position so he could show why he had not collected these taxes. That is my understanding.

(Reading) "In re Title Guarantee & Trust Co.—  
State of Oregon Claims; George A. Steel, Treasurer.  
"January 26th, 1912.

"Mr. Robert L. Stevens,

Sheriff of Multnomah County,

Portland, Oregon.

"My dear Mr. Stevens:—

"Noting considerable agitation relative to the mat-

ter of alleged delinquent personal property assessments, I take occasion to inform you of a condition which you may not know of and yet which may be pressed upon you:—

“All of the property, real, personal and mixed, of The Title Guarantee & Trust Company passed into the hands of the federal court for the District of Oregon on the 6th day of November, 1907. Since which time, and now, it is being administered by that court through its receivers and by the federal judges in Tacoma and elsewhere where its property is situated, solely and only for the purpose of gathering in the assets and distributing them among the various depositors and creditors. All of the property has been and is now in the custody of the law under the administration of the federal court.

“It may have happened that officers of Multnomah County, not knowing this, have undertaken to list an assessment of personal property against the Title Guarantee & Trust Company or against its receiver, or in some manner or way have undertaken to note upon the personal property records of Multnomah County a listed assessment against some of the assets of this concern or its collateral companies.

“With a view to obviating any difficulties that might arise I wish to say to you that under this situation the attitude that has governed the receivership has been one that required it to act at all times pursuant to the orders of the federal court, and as no method or step was taken in that court in reference to these matters, naturally it would not permit its jurisdic-

tion to be interfered with.

"I shall be obliged therefore if you will consider these matters and let me know if under these circumstances you notwithstanding desire to take some action so that I may relieve you of trouble and difficulty and conflict of authority between the State officials and federal court. I am convinced, however, that when you consider the matter you will see that any such assessment that may have been made would have been necessarily erroneous.

"If there is any further information or assistance that I can give you kindly let me know.

"With sincere regards, I have the honor to be

"Very respectfully yours."

Q. Now I show you a letter of September 6, 1913, and ask you to look at it, and with your memory refreshed therefrom say whether or not you took any action upon the suggestion of Henry E. Reed, Assessor, with respect to the matters and things concerned with this general tax matter.

A. I did. Following my custom, I referred these matters up to counsel.

Q. Now then, I show you a paper and ask you if in pursuance to that notice to me you received a document, and whether that in due course was acted upon, and whether that is recognized by you?

A. Yes, this was shown to me.

Mr. BRISTOL: I would like to have counsel for the County produce a letter of September 9th, 1913, to the Board of Equalization for Multnomah County.

Mr. EVANS: Is this a copy of it?

Mr. BRISTOL: Yes. That is absolutely right.

Mr. EVANS: You may offer it.

Mr. BRISTOL: I will offer that in evidence as Receiver's Exhibit 2.

Thereupon said paper was marked by the Reporter

RECEIVER'S EXHIBIT 2.

Mr. BRISTOL: (Reading) Title: "In re The Title Guarantee & Trust Company Receivership.

"September 9th. 1913.

"To the Board of Equalization for  
Multnomah County, in session assembled,  
Portland, Oregon.

"Gentlemen:—

"The notice of Mr. Henry Reed, Assessor, assessment roll page 6119, line 12, item 'Furniture \$500, R. S. Howard, Receiver T. G. & Tr. Co.', hereto attached, has my attention as attorney for the receiver to whom the same was referred for the purpose of respectfully representing to you that this property is incorrectly assessed for the following reasons:—

"First: The receiver is not doing business, nor is there any furniture held or owned by him separate and apart from the estate consisting of the assets in administration in the federal court for the purpose of winding up The Title Guarantee & Trust Company.

"Second. There is now pending in the federal court two separate suits or interventions, one brought under your authority or the authority of your predecessors, by Lionel R. Webster, Esquire, as to prior assessments, the decision upon which remains undetermined.

"The other was brought by District Attorney Evans in addition to and supplemental apparently to the one brought by Judge Webster. Mr. Evans doubtless acted by your authority or in his capacity as District Attorney of the Fourth Judicial District and his application is yet undetermined.

"Third. Many courts have held that a receivership in a winding up suit where the property is merely being held for the benefit of creditors and claimants, is not under a law like that of Oregon subject to personal property tax for two reasons: First, it does not come within the class of property usually subject and intended to be subject to taxation, and, secondly, it is so far in the custody of the law that the assessment and levy without specific statutory application thereto is not effective to impress a lien upon it. It is true that the proceedings already pending will determine this matter one way or the other.

"Fourth. It seems, therefore, entirely unnecessary to involve the county in another suit inasmuch as this question is already well raised and inasmuch as there is serious doubt under the law whether the property can be assessed at all or not.

"Fifth. The receiver in his own name as receiver has or holds no property at 240 Washington Street, independent of the administration in the federal court and all of this property is being turned into money as rapidly as possible for the benefit of the creditors.

"In view of these considerations your Board is asked to cancel the assessment.

"Very respectfully yours."



Q. (Mr. Bristol) I would like to ask preliminarily, is Mr. Maguire more familiar with this correspondence than you are?

A. No; I am more familiar with it.

Q. That is what I thought. Now I show you a letter, purporting to be a letter from the Assessor in 1908, April 30th, 1908, and ask you to look at it and note whether or not that letter was received by you, and whether it is in the same condition as when you received it.

Mr. EVANS: There will be no objection to these letters.

Mr. BRISTOL: I don't think so, although I want counsel to have the full benefit of all these letters.

A. This was received by me soon after my appointment as receiver.

Q. What did you do with it?

A. I turned it over to my counsel, to Mr. Linthicum and Mr. Bristol.

Q. Were you advised what to do?

A. I was, sir. There is a memorandum here carries the advice.

Q. That is just exactly as you got it, is it?

A. Yes, sir.

Q. No change on it since?

A. Not to my knowledge. It was in my files.

Mr. BRISTOL: I offer that in evidence. Mark that Receiver's Exhibit 3, please.

Thereupon said paper was by the Reporter marked RECEIVER'S EXHIBIT 3, and is as follows:

"B. D. Sigler, Assessor,

Multnomah County,

Portland, Oregon.

April 30th, 1908.

"Mr. R. S. Howard Jr., Receiver,

Title Guarantee & Trust Co.,

City.

"Dear Sir:—

"Please furnish this office with a statement showing the amount of Capital Stock, Surplus & Undivided Profits of the Title Guarantee & Trust Co. at the close of business Febr. 28th, 1908, together with a list of the Stockholders of the Bank.

"In case you wish the assessment made directly to the bank please make a written request to that effect as follows:—

" 'We would ask that you make the assessment directly to the Title Guarantee & Trust Co. for and on behalf of the said Stockholders, that the bank may directly pay the taxes; this bank agreeing to hold you harmless for any irregularity in the form of said assessment.

" 'Signed

President or Cashier.

"Yours truly,

B. D. Siger, Assessor.

"Mr. Howard: Advise the Assessor that this property is in custodia legis Federal Ct. U. S. & not subject to assessment as a going concern. Bristol. One copy."

Q. Now in conformity with the enunciation on the bottom of that letter did you advise the Assessor?

A. I did, on the date of May 5th, 1908.

Q. Have you a copy of that letter?

A. I have a copy of it.

Mr. BRISTOL: I offer that in evidence as Receiver's Exhibit 4.

Said paper was thereupon by the Reporter marked RECEIVER'S EXHIBIT 4, and is as follows:

"May 5, 1908.

"Mr. B. D. Sigler,  
Assessor,  
City Hall, City.

"Dear Sir:

"Referring to your letter of April 30th, The Title Guarantee & Trust Company is in custodia legis Federal Court U. S., and is not subject to assessment as a going concern.

"Yours truly, Receiver."

Q. Now did you receive a letter of July 13, 1908, from the Assessor?

A. I did, July 13, 1908.

Q. That is the same letter Mr. Evans had in his copy book, isn't it?

A. Yes; this is the original.

Q. To B. D. Sigler. Did you reply to that letter?

Mr. BRISTOL: This is the original, your Honor, that is in that book over yonder. I offer that as Receiver's Exhibit 5.

Thereupon said letter was by the Reporter marked RECEIVER'S EXHIBIT 5, and is as follows:

"B. D. Sigler, Assessor,  
Multnomah County,  
Portland, Oregon.

July 13th, 1908.

"Mr. R. S. Howard, Receiver,

Title Guarantee & Trust Co.,  
City.

"Dear Sir:

"I am unable to find any law wherein the personal property of the Title Guarantee & Trust Company, in your hands as Receiver, March 1st, 1908, is exempt, since the law reads: 'All real property within this state, and personal property situated or owned within this state, except such as may be specifically exempt by law, shall be subject to assessment and taxation in equal and ratable proportion.'

"Since there is no provision exempting property in the hands of a receiver or any court, there can be no question about the property mentioned being subject to taxation, and I herewith enclose you blank which please fill out and return to me at your earliest convenience.

"Yours very truly, B. D. Sigler, Assessor."

'Q. Did you reply to that letter?

A. I did, on the same date, July 13th, 1908

Mr. BRISTOL: I offer that in evidence as Receiver's Exhibit 6.

Thereupon said paper was by the Reporter marked RECEIVER'S EXHIBIT 6, and was read as follows:

"July 13, 1908.

"Mr. B. D. Sigler, Assessor,  
City Hall, City.

"Referring to your letter July 13th, the matter therein referred to will be taken up with my attorneys and you advised in due course. It may be some days before I can reach this as Mr. W. C. Bristol, one of

my attorneys, is out of the city and will not return for a week or so. I shall then be pleased to take up the matter, and report as above outlined at an early moment.

"Yours truly,

Receiver."

Q. I show you a paper and ask you if that is the kind of a statement you have referred to as having received in its present condition except for the holes in it, which I understand are caused by your files?

A. Yes, that is the form.

Q. There is not anything on it. It was in the exact condition as it is now when it was left with you?

A. Yes, with the exception of the perforations here for my files.

Mr. BRISTOL: I offer that in evidence as Receiver's Exhibit 7.

The COURT: Well, did this come to you as a notification that you had been assessed?

Mr. BRISTOL: No, your Honor. It just came in that particular condition as it is there, and is the invitation that Mr. Funk spoke of for the person in possession of the property to make a statement of it.

Thereupon said paper was by the Reporter marked RECEIVER'S EXHIBIT 7.

The COURT: What time was that sent to you?

A. I can't recall the exact time.

The COURT: What year?

WITNESS: Is that followed there with one of those letters?

Mr. BRISTOL: Yes; it is right in connection with this (passing letter to the witness).

WITNESS: It must have been March 26th, 1909. Here is my office stamp showing the receipt of it. It was soon after the first of March, I was going to say.

Q. Now I show you a letter of March 24th, 1909, which seems to be couched in practically the same language as the previous letters of 1908 and addressed to Title Guarantee & Trust Co. Do you recognize that letter?

A. I do. It is from my files. Yes, I received this.

Q. And what did you do in regard to that,—take the same procedure or some other?

A. I took it up—all of these matters were taken up with my counsel immediately.

Mr. BRISTOL: I offer this in evidence.

Thereupon said paper was by the Reporter marked RECEIVER'S EXHIBIT 8, and was read, as follows:

“B. D. Sigler, Assessor,

Multnomah County,

Portland, Oregon.

March 24th, 1909.

“Title Guarantee & Trust Co.,

2nd & Washington Sts.,

City.

“Gentlemen:

“Please furnish this office with a statement showing the amount of Capital Stock, Surplus and Undivided Profits of the Title Guarantee & Trust Company at the close of business February 28th, 1909, together with a list of the Stockholders of the Bank.

“In case you wish the assessment made directly to the Bank, please make a written request to that effect, as follows:



“We would ask that you make the assessment directly to Title Guarantee & Trust Company for and on behalf of said Stockholders, that the Bank may directly pay the taxes; this Bank agreeing to hold you harmless for any irregularities in the form of said assessment.

“(Signed) President or Cashier.”

“Yours very truly, B. D. Sigler, Assessor. M.”

Q. Now in that connection for 1909 I show you a paper addressed to Title Guar. & Tr. Co., 2nd & Wash. St.”, dated October 16, and bearing stamp of October 26, and ask you if you ever had to do with that and what it is.

A. Yes. I received this and with such notice as I heretofore mentioned as having a recollection of having received.

Q. Now that is for the 1909 tax, isn't it, Mr. Howard?

A. Yes, sir.

Q. Notifies you of the assessment for 1909?

A. October, 1909; yes.

Q. Now does it notify you, Mr. Howard, or does it notify the Title Company?

A. It notifies the corporation.

Q. And is R. S. Howard, Junior's name on there at all?

A. No, sir.

Q. I call your attention to the roll in front of you for that same year, page 6708, roll 1909, and show you line 46; in that connection I call your attention to the words “Title Guarantee & Trust Co.”, and then

following the same "R. S. Howard, Jr., Receiver", merchandise and stock \$40,000 carried out; office furniture and fixtures, or household furniture and fixtures, \$1500; total amount, \$41,500; total tax \$747. Did you receive any notice to R. S. Howard, Junior, Receiver, other than this paper which you have identified?

A. I did not.

Mr. BRISTOL: I offer that in evidence. That is offered, your Honor, for the purpose of illustrating the method and manner they had, and showing that the county treated the Title Guarantee & Trust Company a physical entity, regardless of the receivership, and attempted to assess it for merchandise and for furniture.

Thereupon said paper was by the Reporter marked RECEIVER'S EXHIBIT 9, and is as follows:

"Office of Assessor  
Multnomah County, Oregon.

B. D. Sigler, Assessor

L. H. Maxwell, Chief Deputy  
Portland, Oct. 16, 1909.

"Title Guar. & Tr. Co.  
2nd & Wash., St.,

"Dear Sir:

"I have made an arbitrary assessment of your personal property which will appear on the Assessment Roll as follows:

Merchandise .....\$40,000.

Machinery .....\$———

Money, Notes and Accounts.....\$———

Agricultural Tools, Wagons, Etc.....	\$———
Furniture .....	\$ 1,500
Horses .....	\$———
Cattle .....	\$———
Exemption .....	\$———

"If you are not satisfied with the assessment, as above, you will please appear before the County Board of Equalization, which will be in session during the week, commencing with the Third Monday in October.

"Yours truly, B. D. Sigler, Assessor."

Q. Now what is the fact, Mr. Howard, with reference to there being personal property of the Title Guarantee & Trust Company of any kind or nature existent anywhere outside of your possession?

A. Well, there is none.

Q. Has there ever been any since the 21st of January, 1908?

A. Not to my knowledge.

Q. Did you ever receive other than the papers that I have shown to you, any notices about any of this tax that you owed? Were any claims made for penalty and interest accumulating against this receivership in favor of Multnomah County, the City of Portland or the State, by virtue of these pretended assessments that appear here?

A. There was no talk about penalties.

Q. And outside of the previous testimony, so far as it applied to those statements shown to the Title Guarantee & Trust Company, there was no demand, was there, or was there not, ever made upon you for

payment of penalty and interest as receiver?

A. None excepting these mailed notices to the Title Guarantee & Trust Company.

Q. Was ever any claim filed with you by Multnomah County, or anyone for it, in any particular year, for allowance of a claim for taxes of any kind or nature?

A. No, none.

Q. Then outside of, as I understand it, the demand of Sheriff Stevens sometime along in January, 1912, always conceding to counsel the acts as stated in the official record, there was no notice given to you or claim made by anybody, as receiver, upon which the present intervening petitions are based, was there?

A. No.

Q. The first notice you had of it was the filing of the petition by Emmons & Webster?

A. My first notice.

Q. And when that was served on you what did you do?

A. I took it up with my counsel.

Q. Are you conscious of having done, and if you are I want you to state it fully and frankly, any act which led these officers of Multnomah County to believe—I mean now as a fact, you understand, not your opinion—that they could look to you as receiver of this property for taxes?

A. Why, absolutely not.

Q. State whether or not on the contrary, the fact is that at all times and under all circumstances when this tax matter came up you took a certain fixed, defi-

nite position upon it and so notified them?

A. I have, all along.

Q. And what has that position been? Is it illustrated in this correspondence and notice?

A. Absolutely; yes.

Q. And in your answer?

A. Absolutely.

Mr. BRISTOL: I didn't understand counsel for the petitioners to claim that there are any other assessments other than what has been produced here in evidence.

Mr. EVANS: None that I know of.

Mr. BRISTOL: None that you know of. I think that is all.

Re-direct Examination.

By Mr. EMMONS:

Q. This position that you say you took was that the personal property on which this assessment was made was in the custody of the court and therefore not assessable; is that the position?

A. Yes; under the advice of counsel I took that position.

Q. Yes. It was not because it was assessed in the name of the wrong party but because it was in the custody of the court that you claimed you were not liable?

A. Being in the custody of the court.

Q. You knew, did you, what property the Assessor was attempting to assess, and on what property the Sheriff was attempting to collect the taxes?

A. No, I didn't know the detail of it, Mr. Emmons. I assumed he was assessing notes and accounts, just in a general way.

Q. Personal property in your hands as receiver?

A. Personal property in my hands.

Q. Of the Title Guarantee & Trust Company. And did you ever request this assessment on this property after being notified, as these notices show, to be made in your name as receiver and not in the name of the Title Guarantee & Trust Company?

A. Quite to the contrary, I maintained that I could not meet an assessment.

Mr. BRISTOL: Of course, your Honor, I don't know what counsel means. I don't want to be objecting, but I want this to clearly and distinctly appear on the record. This receiver is merely the instrument of this Court, and this Court is not bound, even if Mr. Howard laid down and did nothing, and therefore it is not competent for Mr. Emmons to pursue, if that is his purpose and he intends to claim for that that because the receiver did not make this or that particular objection that he is now estopped, because nothing estops a federal court; absolutely nothing; and I want to have that point clearly on the record, because it has a tendency to amplify the legal positions that we will take, and I want Mr. Emmons to be fairly informed of our position, namely, that we care not whether Mr. Howard did or did not tell them how they could assess it or get a better assessment, that we shall claim for all intendments whatever there may be against the legality of this assessment, against its validity in



every way, and uphold the right of the federal court to give its permission first as to whether the property should be assessed at all or not.

Mr. EMMONS: I just simply want to get what the facts are before the Court, is all.

The COURT: Well, ask your question.

Q. Then as I understand it, you never requested it to be made anything different, to any different person or otherwise than it was made?

A. I did not.

Q. Were you in any way deceived as to what property was intended to be assessed or against what property the tax was levied by these notices?

A. Deceived? No. I just assumed the assessment was against personal holdings and made in a general way.

Q. Against personal property in your hands as receiver?

A. Yes. I didn't go into the details of it and don't know the details up to this minute what was assessed, beyond this record.

Q. Your objection was a legal objection?

A. A legal objection, under the advice of my counsel.

Q. As to the right to tax personal property in your hands as receiver?

A. Yes, sir.

Q. Mr. Stevens, the Sheriff, had considerable talk with you, did he not, while he was Sheriff, about this collection of this tax?

A. My recollection is Mr. Stevens met me on the

street, if I recall right; he may have come in the banking house; I am not sure as to that. My recollection is that he spoke about it this one time.

Q. And he tried to collect the tax, did he?

A. He called my attention to it.

Q. Did he ask you to pay it?

A. He asked me if I was going to pay it.

Q. Was that before this proceeding was brought?

A. It was.

Q. And you took it up with your attorney at that time, and as a result of that this letter was written to the Sheriff, was it not, on January 26th, 1912? As the letter reads, that was the result of the demand being made upon you by the Sheriff to pay these taxes now attempted to be collected?

A. It was the result of that interview.

Mr. EMMONS: I think that is all.

Mr. EVANS: That is all.

Mr. BRISTOL: It will be conceded, will it not, Mr. Evans and Mr. Emmons, that the only assessment made to the receiver of the Title Guarantee & Trust Company, your nominee, was made this year?

Mr. EVANS: Well, there are two of them there that speak for themselves.

Mr. BRISTOL: No; to the contrary. I think it is very plain. Now we will have to demand, then, all the tax rolls, if that is the case, because we will argue that. We will leave that to the Court as to whether that is an assessment to the receiver.

Mr. EVANS: My contention is, very frankly, it would not make any difference, so far as the legality

of the assessment is concerned.

Mr. BRISTOL: Then if it makes no difference, you will expedite the case by having it conceded that the first assessment you made in this manner, R. S. Howard, Receiver, T. G. & T. Co., or Title Guarantee & Trust Company—I am not quibbling about the words, but the first assessment whereby in the name of the taxpayer appearing in any of your rolls is for 1913 for Multnomah County.

Mr. EVANS: No, I would not say that. The rolls are here involving this, and whatever they show that is what I will concede, and I would not have a right to concede any more than they do show.

The COURT: 1912 and 1913 are not involved in this proceeding, are they?

Mr. EVANS: They are not involved.

Mr. BRISTOL: That may be true, but the question is this: Can Multnomah County arise single-handed, as they want to, and do as it likes with reference to its assessment roll, where with reference to this same property it has done something else? Isn't that material evidence? Most assuredly it puts an interpretation upon their acts. And I say, without peradventure of a doubt and without fear of contradiction, that the first time R. S. Howard as receiver, as your officer, was assessed by Multnomah County was for the year 1913.

Mr. EVANS: That might be so, but I don't know and I don't think it makes a particle of difference.

Mr. BRISTOL: You might not think so.

Mr. EVANS: The County can't be estopped by the

action of its officers, or the state or city, any more than the Court.

Mr. BRISTOL: And likewise this Court can't be estopped by the action of its receiver.

The COURT: I think those are facts that are immaterial here. What we are getting at now is as to the manner of the alleged assessment here.

Mr. BRISTOL: Your Honor don't get my point. In these petitions the question is simply raised as to whether or not this receiver was ever assessed. Mr. Evans says that in his opinion of the law it makes no difference whether the receiver was assessed, or who was assessed; that the Assessor endeavored to reach some property. Now if it was in the possession of the court, or receiver, or whoever it was in possession of, there is an assessment and that is the one we mean. It is certainly pertinent to show with reference to that same County's acts and with reference to the same property, that while this controversy is still pending and prior to the hearing upon the petitions prior to the consideration of the matter before the Court the County takes more acts by its officers thereunto authorized, showing when they first did assess this matter in accordance with the objections of this receiver. Now Mr. Emmon's cross-examination, over my objection, was right along that very line: "Did you make any other objection than this? Did you ever tell the Assessor to do thus and so?" Now I want to show by these records; I have looked at them and know but I don't want them to take my statement for it, if they want to object to it, that the first time they

ever assessed R. S. Howard, Receiver, was upon roll page 6119, line 12, for 1913. That is the present roll.

The COURT: You don't want to concede that?

Mr. EVANS: Well, I don't know. If he says that is so I will admit it as true; but, according to Mr. Bristol's own contention, it could not make a bit of difference how he assessed it. He says the officer of this court can't be assessed for taxes.

The COURT: I suppose we concede that to be true.

Mr. BRISTOL: That is all there is to it.

Mr. EVANS: If he says that is so, that is all right.

Mr. BRISTOL: That is all there is to it, because I fear Mr. Emmon's theory is this: That it devolved upon the receiver, and his cross-examination has tended that way, if he had any objections to make, to have said so to the Assessor, "You are doing this wrong. This is the right way to do it." Else his mouth is closed to make any complaint about any irregularity, illegality, or anything about it. I want to cover that point.

Mr. EVANS: That was brought out by your line of cross-examination yourself. You were putting it along with your questions indicating here that he was never assessed as receiver for the Title Guarantee & Trust Company.

Mr. BRISTOL: Exactly.

Mr. EVANS: And every one of your questions indicated that you were making a point out of that, that he was not assessed as receiver. Now Mr. Emmons was emphasizing the fact that he was invited in some of his letters to say how he would like to be assessed,

and he didn't say anything about it.

Mr. BRISTOL: Then I want the concession, which I understand, on the roll for 1913 the receivership appears as actually assessed for the first time.

Mr. EVANS: No, I won't say that, because there are two others here. But I will leave that to your statement, as you say it does appear on the 1913 roll.

Mr. BRISTOL: Yes.

The COURT: Is that all with this witness?

Mr. EVANS: You did get notice of arbitrary assessments like this for other years, did you not?

Mr. EMMONS: He testified to that.

Mr. EVANS: Oh, he did.

Mr. BRISTOL: Let him answer it again, to be sure. I want you to have the benefit of all there is.

A. I can't recall I received them every year, but I do recall other instances than this.

Mr. EVANS: The reason I am asking is in the year previous to that, referring to Receiver's Exhibit 3 there, and correspondence, and to Receiver's Exhibit 5, the correspondence carried on about the assessment is addressed to you as receiver, I believe?

A. Yes; this was right after my appointment as receiver, just a month or two afterwards.

Mr. EVANS: And in all probability, then, the notices to you would have come as receiver, but you only bring the one here that is addressed to the Title Guarantee & Trust Company?

A. I don't think, Mr. Evans, in those earlier years they were sending these out so regularly as they did later. That is my recollection, although I have no



vivid recollection on it.

Mr. BRISTOL: The trouble is, Mr. Evans, that when they did write to him as receiver in 1908 and 1909 they sent the arbitrary assessment notice to the Title Guarantee & Trust Company and in its name.

Mr. EVANS: Well, the 1908 one is not here. That is the thing I am trying to get at.

Mr. BRISTOL: Well, I don't think we had it. That is all, except I would like to put the general question, if you don't mind: Is there any other matter or thing regarding this you have not been interrogated about, concerning which it is your duty to advise the Court as its officer?

A. There is not.

(Witness excused.)

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Mr. EVANS: That is all, your Honor.

The COURT: Is that all, Mr. BRISTOL?

Mr. BRISTOL: Yes, your Honor, because our evidence practically in a sense is what Mr. Howard has testified to, and in order to keep the record clear I would move your Honor now for the dismissal of both of the petitions of the intervenor upon the grounds that are set forth in the receiver's answer, for insufficiency; and of course that raises these questions that come up under those exceptions and the demurrer, and I have no desire to forestall counsel in the opening and closing of the case. I didn't make that motion to dismiss merely for the purpose of getting a chance to argue both at the front end and at the rear end of this matter, and if they wish to argue the

whole matter now I am willing to concede to them their opening, and then I will reply to anything fresh they might make, or if it is agreeable, I will state my position in it; whichever way you want it?

Mr. EVANS: I don't think it makes any difference. I don't think the Court will shut any of us off from saying anything we desire to.

Thereupon the matter was argued to the Court pro and con.

**[Receiver's Exhibit 1.]**

In re Title Guarantee & Trust Co.—State of Oregon Claims; George A. Steel, Treasurer.

January 26th, 1912.

Mr. Robert L. Stevens,  
Sheriff of Multnomah County,  
Portland, Oregon.

My dear Mr. Stevens:—

Noting considerable agitation relative to the matter of alleged delinquent personal property assessments, I take occasion to inform you of a condition which you may not know of and yet which may be pressed upon you:—

All of the property, real, personal and mixed, of The Title Guarantee & Trust Company passed into the hands of the federal court for the District of Oregon on the 6th day of November, 1907. Since which time, and now, it is being administered by that court through its receivers and by the federal judges in Tacoma and elsewhere where its property is situated, solely and only for the purpose of gathering in the

assets and distributing them among the various depositors and creditors. All of the property has been and is now in the custody of the law under the administration of the federal court.

It may have happened that officers of Multnomah County, not knowing this, have undertaken to list an assessment of personal property against The Title Guarantee & Trust Company or against its receiver, or in some manner or way have undertaken to note upon the personal property records of Multnomah County a listed assessment against some of the assets of this concern or its collateral companies.

With a view to obviating any difficulties that might arise I wish to say to you that under this situation the attitude that has governed the receivership has been one that required it to act at all times pursuant to the orders of the federal court, and as no method or step was taken in that court in reference to these matters, naturally it would not permit its jurisdiction to be interfered with.

I shall be obliged therefore if you will consider these matters and let me know if under these circumstances you notwithstanding desire to take some action so that I may relieve you of trouble and difficulty and conflict of authority between the State officials and the federal court. I am convinced, however, that when you consider the matter you will see that any such assessment that may have been made would have been necessarily erroneous.

If there is any further information or assistance that I can give you kindly let me know.

With sincere regards, I have the honor to be

Very respectfully yours,

Receiver's Exhibit 1. Filed Nov. 26, 1913.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to wit, on the 1 day of July, 1914,  
there was duly filed in said Court, a Petition for  
Appeal, in words and figures as follows, to wit:

**[Petition for Appeal.]**

*In the District Court of the United States*

*in and for the District of Oregon*

*Ninth Judicial Circuit*

*In Equity.*

N. COY,

Complainant,

vs.

THE TITLE GUARANTEE & TRUST COM-  
PANY, a corporation, J. THORBURN ROSS,  
GEORGE H. HILL, T. T. BURKHART,  
JOHN E. AITCHISON and F. M. WARREN,

Defendants.

MULTNOMAH COUNTY,

Intervenor,

vs.

R. S. HOWARD, JR., Receiver of The Title Guar-  
antee & Trust Company,

Respondent.

In the Matter of the Insolvency and Receivership of  
The Title Guarantee & Trust Company.

No. 3209.

In the Matter of the Intervention of Multnomah

County for Personal Property Taxes.

Petition of R. S. Howard, Jr, Receiver of The Title Guarantee & Trust Company, for Appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Filed July 1st, 1914.

To the Honorable, The Judges of the District Court  
of the United States in and for the District of  
Oregon, Ninth Judicial Circuit, in Equity Sitting:—

The petition of R. S. Howard, Jr., receiver in the above entitled matter, doth respectfully show, allege and represent:—

That this is an intervention of Multnomah County as intervenor in the main cause wherein M. Coy is complainant and The Title Guarantee & Trust Company and others are defendants in the matter of the insolvency and receivership of The Title Guarantee & Trust Company, whereby the intervenor, Multnomah County, seeks satisfaction for alleged personal property taxes conceived to have been wrongfully decreed to it in proceedings in said intervention by the order and decree hereinafter referred to.

The above named R. S. Howard, Jr., receiver of The Title Guarantee & Trust Company, as petitioner and respondent in the above entitled intervention filed and presented in the main cause of N. Coy vs. The Title Guarantee & Trust Company, No. 3209 in said Court as above entitled, conceiving himself aggrieved by the decree and order made, rendered and entered on the 23rd day of the month of April in the year 1914,

as more fully and at large appears in Equity Journal number 2 at page 422 thereof in the above entitled intervention, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, upon the grounds and reasons specified in the assignment of errors filed herewith.

The said R. S. Howard, Jr., receiver of the said The Title Guarantee & Trust Company, petitioning respondent, doth pray that this, his appeal, may be allowed and that a transcript of the acts, things and proceedings had, taken and done and the papers upon which the said decree and said acts and proceedings had, taken and done are based and the said order of the 23rd of April, 1914, rendered and made, may be duly authenticated and sent up to the United States Circuit Court of Appeals for the Ninth Circuit conformable to the statute in such cases made and provided.

And the said R. S. Howard, Jr., receiver of The Title Guarantee & Trust Company, doth now submit this his prayer for appeal to the Honorable Charles E. Wolverton, one of the judges of said court appointing him receiver herein for that as such receiver he is amenable to the orders and directions of said court, and doth submit the causes and reasons to said judge so appointing him in order that full consideration of this petition and prayer for appeal may be considered and if deemed proper allowed. And your petitioner will ever pray, etc.

R. S. HOWARD, Jr.,  
Receiver of The Title



Guarantee & Trust Company,  
Petitioner in said Intervention.

W. C. BRISTOL,

Solicitor for R. S. Howard, Jr.,  
Receiver of The Title Guarant-  
tee & Trust Company, Petition-  
er in said Intervention.

[Endorsed]: Petition for Appeal. Filed July 1,  
1914.

A. M. CANNON,  
Clerk.

And afterwards, to wit, on the 1 day of July, 1914,  
there was duly filed in said Court, Order Allow-  
ing Appeal, in words and figures as follows, to  
wit:

**[Order Allowing Appeal.]**

*In the District Court of the United States  
in and for the District of Oregon  
Ninth Judicial Circuit  
In Equity.*

N. COY,

Complainant,

vs.

THE TITLE GUARANTEE & TRUST COM-  
PANY, a corporation, J. THORBURN ROSS,  
GEORGE H. HILL, T. T. BURKHART,  
JOHN E. AITCHISON and F. M. WARREN,  
Defendants.

MULTNOMAH COUNTY,

Intervenor,

vs.

R. S. HOWARD, JR., receiver of The Title Guarantee & Trust Company,

Respondent.

In the Matter of the Insolvency and Receivership of The Title Guarantee & Trust Company.

No. 3209.

In the Matter of the Intervention of Multnomah County for Personal Property Taxes.

Order Allowing Appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

This day came R. S. Howard, Jr., receiver of The Title Guarantee & Trust Company, petitioning respondent, and presented his petition for an appeal, together with the assignment of errors accompanying the same, to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled matter, and upon consideration thereof it is

ORDERED that the said prayer of appeal be received and allowed and that said appeal be and is hereby allowed to the United States Circuit Court of Appeals for the Ninth Circuit upon the filing of a bond in the sum of two hundred and fifty dollars (\$250.00) with American Surety Company of New York as surety, conditioned to make said appeal good or pay the costs thereof;

ORDERER FURTHER that this being an intervention it shall be sufficient to take up such part of the records only as apply directly to the petitioning intervenor, Multnomah County, and only such parts of the main cause as may be pertinent thereto and

necessary to an understanding of the issues.

(Sgd) CHAS. E. WOLVERTON,  
Judge.

[Endorsed]: Order Allowing Appeal. Filed July 1, 1914.

A. M. CANNON,  
Clerk.

And afterwards, to wit, on the 1 day of July, 1914, there was duly filed in said Court, a Notice of Appeal, in words and figures as follows, to wit:

**[Notice of Appeal.]**

*In the District Court of the United States  
in and for the District of Oregon  
Ninth Judicial Circuit  
In Equity.*

N. COY,

Complainant,

vs.

THE TITLE GUARANTEE & TRUST COMPANY, a corporation, J. THORBURN ROSS, GEORGE H. HILL, T. T. BURKHART, JOHN E. AITCHISON and F. M. WARREN,  
Defendants.

MULTNOMAH COUNTY,

Intervenor.

vs.

R. S. HOWARD, JR., receiver of The Title Guarantee & Trust Company,

Respondent.

In the Matter of the Insolvency and Receivership

of The Title Guarantee & Trust Company.

No. 3209.

IN THE MATTER OF THE INTERVENTION  
OF MULTNOMAH COUNTY FOR PERSONAL  
PROPERTY TAXES.

Notice of Appeal.

To MULTNOMAH COUNTY, intervening petitioner, and to MESSRS. EMMONS & WEBSTER, its attorneys; and to

Mr. WALTER H. EVANS, its attorney; and to

WALTER H. EVANS, District Attorney for the Fourth Judicial district of the State of Oregon:—

YOU AND EACH AND ALL AND EVERY ONE OF YOU ARE HEREBY NOTIFIED that R. S. Howard, Jr., receiver of The Title Guarantee & Trust Company, in the above entitled intervention, has filed his prayer for an appeal, and this is your notice thereof that his prayer has been allowed and that he has appealed and does hereby notify you of his appeal from that certain order and decree entered in this proceeding in intervention on the 23rd day of April, 1914, as set forth at large in volume 2 of the equity journals of said court at page 422 thereof and from the whole and every part of said decree and all of it and copies of his petition and prayer for said appeal, of his bond therefor, of the order allowing the same and of his assignment of errors upon which the same is based are herewith served upon you.

W. C. BRISTOL,

Solicitor for R. S. Howard, Jr.,

Receiver of The Title Guar-  
antee & Trust Company,  
Petitioner in said Intervention.

District of Oregon,

County of Multnomah.—ss.

Due service of the within Notice of Appeal is hereby accepted in Multnomah County, Oregon, this 30th day of June, 1914, by receiving a copy thereof, duly certified to as such by W. C. Bristol, Attorney for Receiver.

EMMONS & WEBSTER,  
Attorneys for Multnomah County.  
WALTER H. EVANS,  
District Attorney of Multnomah Co.,  
Oregon.

[Endorsed]: Notice of Appeal. Filed July 1, 1914.

A. M. CANNON,  
Clerk.

And afterwards, to wit, on the 1 day of July, 1914,  
there was duly filed in said Court, Assignments  
of Error, in words and figures as follows, to wit:

**[Assignments of Error.]**

*In the District Court of the United States  
in and for the District of Oregon  
Ninth Judicial Circuit  
In Equity.*

N. COY,

Complainant,

vs.

THE TITLE GUARANTEE & TRUST COM-

PANY, a corporation, J. THORBURN ROSS,  
GEORGE H. HILL, T. T. BURKHART,  
JOHN E. AITCHISON and F. M. WARREN,  
Defendants.

MULTNOMAH COUNTY,

Intervenor,

vs.

R. S. HOWARD, JR., receiver of The Title Guarantee  
& Trust Company,

Respondent.

In the Matter of the Insolvency and Receivership  
of The Title Guarantee & Trust Company.

No. 3209.

In the Matter of the Intervention of Multnomah  
County for Personal Property Taxes.

Assignments of Errors by Respondents, R. S. How-  
ard, Jr., Receiver, upon his Appeal in said Interven-  
tion.

To the Honorable Judges of the District Court of the  
United States in and for the District of Oregon,  
in Equity sitting:—

These are the (assignment of) errors preferred  
by R. S. Howard, Jr., receiver of The Title Guarantee  
& Trust Company, petitioning appellant and respond-  
ent in the above entitled cause:

Now comes the petitioning respondent appellant,  
R. S. Howard, Jr., receiver of The Title Guarantee &  
Trust Company, and having prayed for an allowance  
of an appeal from the order and decree entered in the  
intervention of Multnomah County in this cause on  
the 23rd day of April, 1914, against him requiring the



payment of certain taxes, penalties and interest therein in said decree referred to, sets forth the grounds and reasons for said appeal and assigns for errors in said decree and proceedings of Court thereabout the following:—

*FIRST.*

That the said District Court of the United States in and for the District of Oregon, Judge Charles E. Wolverton sitting, erred in determining and deciding that the laws of the State of Oregon provide for the assessment of personal property taxes against a receivership or property surrendered to the Court in the hands of its receiver.

*SECOND.*

That the said District Court erred in determining and deciding that The Title Guarantee & Trust Company still retained a corporate entity for the purpose of winding up its business, and in that connection in determining and deciding that it was corporate business that the receiver was transacting herein at the time and during the periods the alleged personal property taxes were said to have been assessed.

*THIRD.*

That the said District Court erred in determining and deciding that all property according to the revenue and taxation laws of the State of Oregon is by those laws assessable, in so far as the Court applied such a determination and decision to personal property in the hands of said receiver.

*FOURTH.*

That the said District Court erred in determining

and deciding that The Title Guarantee & Trust Company, for the purposes of applying the law in this case, was a going concern, submitting its property in process of dissolution to the action of the taxing authority, whereas in truth and in fact all of the property of The Title Guarantee & Trust Company was surrendered and the officers thereof had released their control thereto and said matters were of record in said Court in the main cause at the time of the filing of the petitions in intervention and before the assessment of the taxes the basis of the petitions in intervention.

*FIFTH.*

That the said District Court erred in determining and deciding that The Title Guarantee & Trust Company, through itself and receiver, was in possession of property subject to taxation as a going concern, for that the bill of complaint upon which said Court acquired original jurisdiction in said main cause submitted said corporation to the jurisdiction for the purposes and upon the facts as in said bill set forth, for more particular identification of which it is in connection with this assignment of errors set forth fully and at large that the point of law based on this assignment of errors may appear clearly, to-wit:—

*SIXTH.*

That the said District Court erred in determining and deciding that The Title Guarantee & Trust Company, through itself and receiver, was in possession of property subject to taxation as a going concern, for that the appearance and consent filed by the defend-

ants in said main cause submitted said corporation to the jurisdiction of the court for the purposes and upon the facts as in said appearance and consent set forth, for more particular identification of which it is in connection with this assignment of errors set forth fully and at large that the point of law based on this assignment of errors may appear clearly, to-wit:—  
*SEVENTH.*

That said District Court erred in determining and deciding that the personal property taxes claimed for in the petition in intervention were assessed against property of a going concern in the hands of a receivership and as if previous to the time when the receivership had occurred, whereas in truth and in fact this was a proceeding winding up and liquidating all of the property of the corporation, all of the officers of whom had surrendered its corporate entity to the Court, together with all of its property, including all of its personal property then being distributed to claimants and distributees whose claims had been duly proved and allowed.

*EIGHTH.*

That the said District Court erred in determining and deciding that the personal property assessed was the personal property of the corporation or the receiver because the same was a trust fund for the creditors and claimants of the corporation who as claimants and distributees thereof with proved and allowed claims were entitled to the same.

*NINTH.*

That the said District Court erred in determining

and deciding said alleged personal property tax was recoverable for the reason that no business was ever done by the corporation, The Title Guarantee & Trust Company, of any kind or nature whatsoever from and after the 2nd day of November, 1907, long after the alleged assessment of taxes on personalty described in the petitions, so that there was no personal property of the corporation to be assessed in the same manner as that of a natural person, nor was there any personal property in the hands of the receiver assessed during said period, there being no such class of property defined in the laws of Oregon for assessment and taxation in that state.

*TENTH.*

That the said District Court erred in determining and deciding "but where property remains within the jurisdiction and within the hands of the person taxed there is no impediment to the enforcement of the payment of the personalty tax assessed against him," and in applying it to this case because there was no property in the hands of the person taxed belonging to such person as his or its personal property at the time of the alleged tax and an assessment claimed to have been made either to the receiver or to the corporation under the facts of this case did not support the Court's opinion in that regard.

*ELEVENTH.*

That the said District Court erred in determining and deciding,—especially when it found that the taxing officers of the petitioner were early advised that the receiver would resist the payment of taxes as-

sessed against personal property within his hands before any of the taxes in question were levied and also found that the taxes which are sought to have paid were assessed a part of the time in the name of the defunct company alone and a part of the time in the name of the receiver, that the same could be claimed by Multnomah County out of personalty distributed to the various creditors and claimants during the process of administration occurring while said property was said so to have been assessed.

*TWELFTH.*

That the said District Court erred in failing and refusing to decide and in disregarding the point submitted to it below, viz:—

“*FOURTH.* That all of the so-called personal property mentioned in the intervening petitions, if assessed to The Title Guarantee & Trust Company, has been and was doubly assessed, for that all of such property was the property of the creditors and claimants who presented their claims to the receiver and had said claims approved and allowed during the times and for amounts which represented the actual conversion of the personal property of The Title Guarantee & Trust Company into liquidated assets which were in turn distributed to said creditors and claimants who in turn paid personal property taxes assessed to each of them individually, and hence it is not competent for Multnomah County to claim that during the same time and in respect to the same property other personal property taxes could be

assessed against and collected from The Title Guarantee & Trust Company or its estate.”

*THIRTEENTH.*

That the said District Court erred in failing and refusing to decide and in disregarding the point submitted to it below, viz:—

“*FIFTH.* The affairs of The Title Guarantee & Trust Company are not in the nature of an operated concern kept alive by a receivership and administered by the court, but upon the 2nd day of November, 1907, it became insolvent, admitted its insolvency, its officers came into court and surrendered the company to the court, the court took possession of it, appointed its receiver and there has been no corporate management subsequent to such control, except only for the purpose of a more full and better administration of this court.”

*FOURTEENTH.*

That the said District Court erred in failing and refusing to decide and in disregarding the point submitted to it below, viz:—

“But in this case we are not presented with a situation upon either petition of a tax actually attaching to property previous to any possession by the court. The tax for 1907 could not be leviable as a matter of law until after the 1st of January, 1908, and the Board of Equalization did not sit and determine the tax roll assessment until October, 1907, and before the amount of the tax could be computed for the year 1908 all of the



property of The Title Guarantee & Trust Company had passed into possession of the court, hence we have not a case presented here which is likened to the cases that ordinarily arise in the matter of imposition of taxes upon going receiver-ships."

*FIFTEENTH.*

That the said District Court erred in disregarding and in overlooking and refusing to decide, in conformity with the law of the State of Oregon, that a court of equity is without power to render a money judgment for the amount of personal property taxes claimed in the intervening petitions.

*SIXTEENTH.*

That the said District Court erred in disregarding the point submitted to it below, viz:—

"The receiver has all along contended that the petitions in this case were not sufficient to justify a recovery. It nowhere appears that the County of Multnomah exhausted its remedies as against the real estate in the name of or claimed to be held by The Title Guarantee & Trust Company and it is only against real estate or against the personal property itself *in situ* that the delinquency can be enforced by a warrant."

*SEVENTEENTH.*

That the opinion and decision of the District Court is directly against and not in conformity with the decisions of the Supreme Court of the United States in the case of *United States v. Whitridge*, receiver, and *United States v. A. H. Jolin, et al.*, receivers, wherein,

on writ of certiorari granted March 10, 1913, 227 U. S. 680, said Supreme Court of the United States affirmed the decision of the Pennsylvania Steel Co. v. New York City in 190 Fed. 777, on or about the 11th of November, 1913, prior to the trial of this intervention, although said opinion was then submitted to said court on the trial below.

*EIGHTEENTH.*

That the said District Court erred in disregarding the point submitted to it below, viz:—

“Fifth. Even bankruptcy courts and the statutes relative to administration of estates provide only for taxes *in esse* at the time of the commission of the act of bankruptcy or the death of the testator and taxes afterwards upon personalty are paid not by the bankruptcy estate or the estate of the decedent, but by those into whose hands the property is distributed.”

*NINETEENTH.*

That the said District Court erred in disregarding the testimony and evidence presented upon the hearing as given by the witness Chief of Field Work in the Assessor's office as follows, to-wit:—

“Q. Did you find out, and refresh your memory about R. S. Howard, Jr., receiver, business?”

A. No, I didn't look any further in regard to it, Mr. Bristol.

Q. I will call your attention to intervenor's exhibit 2 and ask you if I understand you correctly that this red shows that the same sort of an arbitrary assessment would be made to The Title Company for

1909?

A. Exactly.

Q. Exactly. So that if you had that statement here it would be just the same as that one?

A. It would be absolutely the same. The red is put on there for the benefit of the Assessor in making comparisons each year.

Q. I am particularly anxious to know whether the name of the receiver would be upon that assessment or that statement at all?

A. Well, that I could not tell you.

Q. Well, it is not on that one, is it?

A. No. That I could not tell you. But the amounts here are taken, these amounts here are taken from the previous.

Q. Yes, I understand that; the previous roll?

A. Yes. But in regard to the name, why, I could not tell you.

Q. Well now, this roll says, 'Title Guarantee & Trust Co.', don't it?

A. Yes.

Q. 'Character of business, banking'?

A. That is the item, the statement there, although the roll might include even more than that.

Q. All right; let's look at it. 6782, line 45, would represent the roll for 1910, wouldn't it?

A. Yes, sir.

Q. That is on Intervenor's Exhibit 2 and is the entry that shows that this statement was entered?

A. Yes, sir, that is it exactly.

Q. I notice on here in blue pencil, 'See Maxwell

before entering.' What does that mean?

A. Well, evidently Mr. Maxwell asked something in regard to it. Maybe he wrote it himself. I don't know whether he did or not.

Q. Why was it that Maxwell was always the fellow that was particularly concerned here about this Title Guarantee & Trust Company tax apparently?

A. Well, that I don't know, otherwise than that he was chief deputy in the office. Otherwise I could not tell you.

Q. Now, I show you the 1909 roll at the point and place where line 46 appears, and ask you by what authority anybody would have to enter the name of the Receiver, in view of the fact that you told us this morning on your direct testimony that these entries here were made up from statements previously prepared and that this statement, Intervenor's Exhibit 2, which you say is a proper one, does not show the name R. S. Howard, Jr., Receiver?

A. Well, that would not be any reason why that they could not be added to it, because it is not a tax roll, Mr. Bristol.

Q. Well, but I am getting at the fact that you stated—

A. (Interrupting) It could not be—

Q. (Interrupting) Now, wait a minute. Did I understand you correctly that the foundation for the roll itself is either a previous blank or a previous statement either actually made by the owner or arbitrarily made by the Assessor?

A. Yes, sir.

Q. Is that true?

A. That is true.

Q. Now then, it is also true, isn't it, that Intervenor's Exhibit 2, you told us was the same by reason of these red letters that you identify it by, was the same for 1909 as it was for 1910?

A. Yes, sir. These items—

Q. (Interrupting) Now then, these—

Mr. EVANS: (Interrupting) Wait until he gets his answer finished.

Mr. BRISTOL: All right. Go ahead.

WITNESS: These items are absolutely the same. (Indicating). These may not be the same, because if this had changed hands and was under a different name, why, these items would appear, as this was assessment on the particular property.

Mr. EVANS: 'This' and 'these' don't get in the record.

Q. (Mr. Bristol) So you did have some information then with regard to the future whether the institution changed hands, did you?

A. Oh, sure.

Q. Now, as a matter of fact, it had changed hands prior to 1909, hadn't it?

A. Yes; part of it was changed hands anyway, before that.

Q. No, but I am getting at the actual physical situation as to the Title Guarantee & Trust Company. Did not you as one of the Assessor's deputies, know that the Title Guarantee & Trust Company went into the hands of this court on November 2nd, 1907?

A. There is no doubt but what the Assessor knew it.

Q. Yes; all the time?

A. There is not any argument about that.

Q. Well, I don't know whether there is or not. What is the fact? You people representing Multnomah County knew that, didn't you? It was published in the papers and everywhere else?

A. There is no doubt about it.

Q. No. Now, what I think is particular material to us is that if the Receiver on the one hand was constantly contending, or making it appear, that there was no liability, and the Assessor was making it appear that there was a liability, and that arbitrary assessments were made in this way all the time to get a foundation for the rolls, how it came about that when we got the arbitrary assessment statement produced, the Receiver's name is not on it, if there was an intention to assess the Receiver.

A. That does not make any difference, because this is not a roll.

Q. Which is not a roll?

A. This not the roll until after it is accepted as a roll. You see, this is simply the foundation of the tax roll. At the time that the Assessor makes this up, now—

Q. (Interrupting) What you are referring to as 'this,' is book 6708 of 1909 tax?

A. Yes; any book, as far as that is concerned, that is included in the roll. I am making a general statement that so far as the Assessor was concerned, if the



day before he turned this over to the Board of Equalization he had got information that these safety deposit vaults were only worth five hundred dollars he had a perfect right to change this to five hundred dollars. That is not violating any part of the law. And if he found R. S. Howard, Jr., was an owner of a part of it the day before he turned it over, he had a right to add R. S. Howard, Jr.'s. name so long as he notifies him.

A. Yes.

Q. Have you got any proof that he ever notified him?

A. Yes.

Q. What?

A. The record shows, you know, the date of the notification, and that is the only person that he could notify.

Q. Where is the record of notification in 1909 that you notified the Receiver?

A. We haven't got it here.

Q. You haven't got it here. Did you notify the Receiver?

A. I always do.

Q. Not the Title Guarantee & Trust Company, but the Receiver.

A. Always do, because the Assessor knew—there is no doubt but what he knew The Title Guarantee & Trust Company was in the hands of a Receiver and that R. S. Howard, Jr., was the Receiver.

Q. Now, Mr. Funk, just a minute. I don't want you to make a statement that might be incorrect.

A. I don't want to, either.

Q. I know, but listen. Now let me remind you: You remember that George H. Hill was the first Receiver in this court, don't you, and that he was removed?

A. Yes, I remember he was, yes.

Q. And you remember that next to George H. Hill came Edward C. Mears, who would be the receiver in the year that this assessment was made, 1909.

A. Well then, probably Mr. Mears is the man that —

Q. (Interrupting) Well then, how does it come that R. S. Howard's name is put there? That is just what I want to know.

A. Well, if Mr. Mears was the receiver at the time that this roll was turned over to the Board of Equalization, I haven't any explanation.

Q. Yes. Well now, the roll for 1909 taxes—let's get it right now—the roll for 1909 taxes would be in the Board of Equalization in October of 1908, wouldn't it?

A. Yes, October of 1908.

Q. Wouldn't it?

A. No; October of 1909.

Q. Not the 1909 roll; that would be the ten roll.

A. The 1909 roll is 1909.

Q. The 1909 roll is 1909?

A. Yes.

Q. In other words, then, if that be the case, there is twelve months yet in our favor that I didn't know about. The roll for this year of 1913, for instance, we

went before the Board as taxpayers in October, 1913?

A. That is correct.

Q. Now, that roll you don't collect on until after the 1st of March, 1914?

A. Yes.

Q. Is that right?

A. The 1st of February.

Q. The 1st of February, yes. Now then, this 1909 roll then would not be subject to collection upon it until the following 1st of February, 1910?

A. That is correct."

*TWENTIETH.*

That the said District Court erred in disregarding the evidence and in failing and refusing to find upon the evidence and the concession made by the intervening petitioner, Multnomah County, upon the trial, the evidence and the concession that the only time and the first time that R. S. Howard, receiver, was ever assessed was upon roll page 6119, line 12 for 1913, the present roll, pages of the record 79, 80 and 81, and the evidence does not disclose and there was not any evidence tending to show or prove that any assessment was made against property of The Title Guarantee & Trust Company or its receiver as a going concern or otherwise than as shown on said rolls in the name of The Title Guarantee & Trust Company as if it were a going concern.

*TWENTY-FIRST.*

That the said District Court erred in determining and deciding that Multnomah County, intervening petitioner, could recover penalties and in adjudging and

ordering any penalties to be paid upon any of the alleged personal property taxes.

*TWENTY-SECOND.*

That the said District Court erred in determining and deciding in favor of the intervening petitioner, Multnomah County, and against R. S. Howard, Jr., receiver, as follows, to-wit:—

“IT IS HEREBY ORDERED AND DIRECTED, that R. S. Howard, Jr., Receiver herein, pay to the TAX COLLECTOR of Multnomah County, on account of the State, County, School, and Municipal taxes assessed against the personal property of The Title Guarantee & Trust Company for the year 1908, the sum of \$1,304.00 in taxes, and the further sum of \$130.40, being 10 per cent penalty on the amount of the above taxes, and \$13.04 being interest on the above taxes at 12% from April 5, 1909 to May 5, 1909, and further that he pay forthwith to the Tax Collector of Multnomah County, on account of the State, County, School, and Municipal taxes assessed against the personal property of The Title Guarantee & Trust Company for the year 1909, the sum of \$747.00 in taxes, and the further sum of

\$74.70, being 10% penalty on the amount of the above taxes, and \$7.47, being interest on the above taxes at 12% from April 4, 1910, to May 4, 1910, and further, that he pay forthwith to the Tax Collector of Multnomah County, on account of the State, County, School and Municipal taxes assessed against the personal property of The

Title Guarantee and Trust Company, for the year 1910, the sum of \$913.00 in taxes, and the further sum of \$91.30, being 10 per cent penalty on the amount of the above taxes, and \$9.13, being interest on the above taxes at 12% from April 3, 1911 to May 3, 1911."

Dated at Portland, Oregon, this 23rd day of April, A. D., 1914."

*TWENTY-THIRD.*

That the findings and decree of said District Court are against the law and the equity of the case as presented by the intervening petitions and the answers thereto.

WHEREFORE, the said petitioning respondent, receiver, prays that the said order and decree of April 23, 1914, be reversed and that said District Court of the United States for the District of Oregon may be directed to enter an order and decree in consonance with law and equity herein giving and decreeing to this petitioner the rights he should have, and your petitioner will ever pray, etc.

R. S. HOWARD, JR.,

Receiver of The Title Guar-  
antee & Trust Company,

Respondent Appellant.

W. C. BRISTOL,

Solicitor for R. S. Howard,

Jr., Receiver of The Title

Guarantee & Trust Company,

Respondent Appellant.

[Endorsed]: Assignment of Errors. Filed Jul. 1, 1914.

A. M. CANNON,  
Clerk.

And afterwards, to wit, on the 1 day of July, 1914, there was duly filed in said Court, a Bond on Appeal, in words and figures as follows, to wit:

**[Bond on Appeal.]**

*In the District Court of the United States  
in and for the District of Oregon  
Ninth Judicial Circuit  
In Equity.*

N. COY,

Complainant,

vs.

THE TITLE GUARANTEE & TRUST COMPANY, a corporation, J. THORBURN ROSS, GEORGE H. HILL, T. T. BURKHART, JOHN E. AITCHISON and F. M. WARREN,  
Defendants.

MULTNOMAH COUNTY,

Intervenor,

vs.

R. S. HOWARD, JR., receiver of The Title Guarantee & Trust Company,

Respondent.

In the Matter of the Insolvency and Receivership of The Title Guarantee & Trust Company.

No. 3209.

IN THE MATTER OF THE INTERVENTION



OF MULTNOMAH COUNTY FOR PERSONAL  
PROPERTY TAXES.

KNOW ALL MEN BY THESE PRESENTS, that we, R. S. Howard, Jr., receiver of The Title Guarantee & Trust Company, petitioning respondent appellant, as principal, and American Surety Company of New York, as surety, are held and firmly bound unto Multnomah County, its successors and assigns, intervenor appellee, in the full and just sum of two hundred and fifty dollars (\$250.00), to be paid thereunto to its certain attorneys, successors or assigns, to which payment well and truly to be made we bind ourselves as well as our heirs, successors, executors, personal representatives and assigns, jointly and severally, by these presents.

Sealed with our hands and dated this ..... day of ....., in the year of our Lord one thousand nine hundred and fourteen.

WHEREAS, lately, about the 23rd day of April, 1914, in the District Court of the United States in and for the District of Oregon in the main suit depending wherein N. Coy is complainant and The Title Guarantee & Trust Company and others respondents, by an intervention therein had whereby Multnomah County was petitioner and R. S. Howard, Jr., receiver of The Title Guarantee & Trust Company, respondent, an order and decree was rendered and entered against R. S. Howard, Jr., receiver of The Title Guarantee & Trust Company, directing certain things to be done for and on behalf of Multnomah County, petitioner; and,

WHEREAS, the said R. S. Howard, Jr., has obtained an appeal therefrom to the United States Circuit Court of Appeals for the Ninth Circuit and filed a copy of the same in the clerk's office to reverse the aforesaid proceedings; and,

WHEREAS, a citation has issued to the appellee to be and appear at the next session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in San Francisco;

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that if the said R. S. Howard, Jr., receiver of The Title Guarantee & Trust Company, petitioning respondent, shall prosecute his appeal to effect and answer all damages and costs if he fails to make his appeal good, then the above obligation is void, else to remain in full force and effect.

R. S. HOWARD, Jr.,

Receiver for The Title Guarantee & Trust Company.

AMERICAN SURETY COMPANY  
OF NEW YORK.

By W. J. LYONS,

Resident Vice President.

Attest:

[Seal]

W. A. KING,

Resident Assistant Secretary.

W. A. KING,

Agent.

Pursuant to order heretofore entered touching said

appeal, this bond now presented to me is hereby approved.

CHAS. E. WOLVERTON,  
Judge.

[Endorsed]: Bond on Appeal. Filed Jul. 1, 1914.  
A. M. CANNON,  
Clerk.

And afterwards, to wit, on the 14 day of July, 1914,  
there was duly filed in said Court, an Order, in  
words and figures as follows, to wit:

**[Order to Reproduce Testimony.]**

*In the District Court of the United States  
in and for the District of Oregon  
Ninth Judicial Circuit  
In Equity.*

N. COY,

Complainant,

vs.

THE TITLE GUARANTEE & TRUST COM-  
PANY, a corporation, J. THORBURN ROSS,  
GEORGE H. HILL, T. T. BURKHART,  
JOHN E. AITCHISON and F. M. WARREN,  
Defendants.

MULTNOMAH COUNTY,

Intervenor,

vs.

R. S. HOWARD, JR., receiver of The Title Guar-  
antee & Trust Company,

Respondent.

In the Matter of the Insolvency and Receivership

of The Title Guarantee & Trust Company.

No. 3209.

IN THE MATTER OF THE INTERVENTION  
OF MULTNOMAH COUNTY FOR PERSONAL  
PROPERTY TAXES.

Touching the evidence to be included in the record upon the appeal herein it is by the court on consideration of the whole case and for causes and reasons sufficient thereunto.

ORDERED AND DIRECTED that all of the testimony taken by Mr. Alva W. Person on the trial of said cause shall be reproduced in the exact words of the witness and that the said record of testimony so taken and adduced shall be incorporated at large into the transcript on appeal.

CHAS. E. WOLVERTON,  
Judge.

[Endorsed]: Order. Filed Jul. 14, 1914.

A. M. CANNON,  
Clerk.

And afterwards, to wit, on the 16 day of July, 1914, there was duly filed in said Court, a Citation on Appeal, in words and figures as follows, to wit:

**[Citation on Appeal.]**

UNITED STATES OF AMERICA,  
District of Oregon.—ss.

To Multnomah County, Oregon, and Emmons & Webster, its attorneys, the State of Oregon, the City of Portland and Walter H. Evans, District

Attorney for Multnomah County, Oregon, Greeting:

WHEREAS, R. S. Howard, Jr., Receiver of Title Guarantee & Trust Co., has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered in the District Court of the United States for the District of Oregon, in your favor, and has given the security required by law;

YOU ARE, therefore, hereby, cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

GIVEN under my hand, at Portland, in said District, this 15th day of July in the year of our Lord, one thousand, nine hundred and fourteen.

CHAS. E. WOLVERTON,

Judge.

[Endorsed]: Citation on Appeal. Filed July 16, 1914.

A. M. CANNON,

Clerk.

And afterwards, to wit, on the 14 day of July, 1914, there was duly filed in said Court, an Order Certifying Up Exhibits, in words and figures as follows, to wit:

## [Order Certifying Up Original Exhibits.]

*In the District Court of the United States  
for the District of Oregon*

No. 3209

July 14, 1914.

N. COY,

Complainant,

v.

TITLE GUARANTEE & TRUST COMPANY, et  
al.,

Defendants.

In the Matter of the Intervention of Multnomah  
County, et al., for payment of taxes.

It appearing to the Court that certain exhibits introduced in evidence at the trial of this cause are of such character as to require inspection by the appellate court upon the appeal herein; it is Ordered that Petitioner's original exhibits one and two and receiver's original exhibit seven be certified up with the transcript to the United States Circuit Court of Appeals, for the Ninth Circuit.

CHAS. E. WOLVERTON,

Judge.